

and formulate some plans of procedure.

The Chair: I think that is a good idea.

Senator Redditt: I would like to make this suggestion; if anybody will write out any question they want me to ask for them I will ask them.

Senator Martin: I want to make this statement in behalf of Mr. Hair; quite a number of questions were asked here yesterday undertaking to heave this loss that has been sustained on to the county judges and commissioners courts. That this morning there have been quite a few instances where it was suggested that the Highway Department was responsible for what the county judges may or may not have done, or what the commissioners courts may or may not have done? I don't feel like it is right for any department of this government here in this investigation, or at any other place, to heave all of the blame for whatever may have happened over on some other department, and then have us to sit here as a State Senate and say the other department cannot speak in person, but through counsel.

Senator Woodward: Let me make this statement for myself. I want the record to show as one of the members of the Senate I am not trying to lay any blame on the commissioners, and if they did the right thing I am for them.

Senator Pace: I make a motion we recess this hearing until 2 p. m. next Monday.

The Chair: Are there any further questions?

Senator Martin: In the interest of time if the Highway Department, if they have any of these contracts we asked for yesterday, if they will deliver them to the Secretary of the Senate I will have access to them between now and then, and that will be quite an advantage.

The Chair: The reporter will please deliver a copy of that request from Senator Martin to the Secretary of the Senate, and the Secretary will transmit it to the Highway Department, and have the matter available Monday morning.

Senator Martin: Have it available this afternoon. If it is not available this afternoon have it here Monday morning.

(Whereupon the hearing was adjourned until 2 o'clock p. m., Monday, February 20th, 1933.)

TWENTY-SIXTH DAY.

Senate Chamber,
Austin, Texas,
February 20, 1933.

The Senate met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Lieutenant Governor Edgar E. Witt.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Oneal.
Blackert.	Pace.
Collie.	Parr.
Cousins.	Patton.
DeBerry.	Poage.
Duggan.	Purl.
Fellbaum.	Rawlings.
Holbrook.	Redditt.
Hopkins.	Regan.
Hornsby.	Russek.
Martin.	Sanderford.
Moore.	Small.
Murphy.	Stone.
Neal.	Woodruff.

Absent—Excused.

Greer.	Woodward.
Woodul.	

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Stone.

Petitions and Memorials.

(See Appendix.)

Committee Reports.

(See Appendix.)

Bills and Resolutions.

By Senator Hopkins:

S. J. R. No. 15, A joint resolution Proposing an amendment to Article XI of the Constitution of the State of Texas by adopting a new section, to be known as Section 11, and which shall provide that counties, cities and towns may by a majority vote of the qualified voters thereof, at an election held for that purpose, adopt public debt limits in lieu of the ad valorem tax rate limits now prescribed for such subdivisions; providing that the public debt limits

herein prescribed shall not apply to any county indebtedness under authority of Article 3, Section 52, and Article 11, Section 7 of this Constitution, or any indebtedness of any city or town under authority of Article 7, Section 3, or Article 11, Section 7 of this Constitution or indebtedness payable from sources other than ad valorem taxes; and providing for the levy of taxes ad valorem for payment of indebtedness of such subdivisions and for support and maintenance of their local governments; providing the debt limitations herein prescribed or voted shall not prevent the issuance of bonds of any such county, city or town for the purpose of funding or refunding the valid indebtedness of such county, city or town; fixing the time for the election for the adoption or rejection of said proposed constitutional amendment; making certain provisions for said election and ballots thereof and the method thereof; directing the issuance of the proclamation therefor; prescribing certain duties of the Governor of the State and making appropriation to defray the expense of said election.

Read and referred to Committee on Constitutional Amendments.

By Senator Oneal:

S. J. R. No. 16, A joint resolution Proposing amendment to Section 1 of Article 8 of the Constitution of the State of Texas.

Providing that taxation of real property shall be equal and uniform; and all property whether owned by natural persons or corporations, other than municipal, shall be taxed in proportion to its value as may be ascertained as provided by law; that the Legislature may make reasonable classification of all property other than real property for the purpose of taxation; providing that the taxation of property in any class shall be equal and uniform; and providing that the Legislature may impose a poll tax and may impose an occupation tax on natural persons and corporations other than municipal, doing business in this State; that it may tax incomes of both natural persons and corporations, other than municipal, except that persons engaged in mechanical and agricultural pursuits shall never be required to pay an occupation tax; exempting two hundred and fifty (\$250.00) dollars worth of house-

hold and kitchen furniture belonging to each family in this State; and providing further that the occupation tax levied by any county, city or town for any year on persons or corporations pursuing any profession or business shall not exceed one-half of the tax levied by the State for the same period.

Read and referred to Committee on Constitutional Amendments.

By Senator Small:

S. J. R. No. 17, A joint resolution Proposing an amendment to Section 9 of Article 8 of the Constitution, authorizing an additional levy of taxes by political subdivisions of the State not to exceed two mills on the one (\$1.00) dollar valuation; calling and providing for an election for the purpose of submitting said amendment to the people; providing means and manner thereof, and making an appropriation therefor.

Read and referred to Committee on Constitutional Amendments.

By Senator Holbrook:

S. B. No. 234, A bill to be entitled "An Act making an appropriation to be paid out of the General Revenue Fund of the State of Texas the sum of twelve thousand twelve dollars and seventy-nine cents (\$12,012.79), not otherwise appropriated, to cover taxes due by the State of Texas to Fort Bend County, covering the years 1929 to 1932, inclusive; and declaring an emergency."

Read and referred to Committee on Finance.

By Senator Small:

S. B. No. 235, A bill to be entitled "An Act providing that the State Board of Education shall perform such duties and exercise such authority as is provided by the Constitution and as is now provided by law in regard to the selection and purchase of free textbooks, and shall perform no other duties and exercise no other authority; providing that the State Superintendent of Public Instruction shall hereafter perform all the duties and exercise the authority formerly required by law to be performed and exercised by the State Board of Education, except those duties specifically enumerated in this Act; repealing all laws and parts of laws in conflict with the provisions of this Act; and declaring an emergency."

Read and referred to Committee on Educational Affairs.

By Senator Hopkins:

S. B. No. 236, A bill to be entitled "An Act authorizing savings banks, banking institutions, trust companies, insurance companies and building and loan associations organized under the laws of this State and any person acting as executor, administrator, guardian or trustee to invest in the bonds, debentures or other obligations issued by any Federal Home Loan Bank organized pursuant to an Act of Congress entitled: 'An Act to create Federal Home Loan Banks, to provide for supervision thereof and other purposes,' approved July 22, 1932, which Act is known as the 'Federal Home Loan Bank Act.'"

Read and referred to Committee on Banks and Banking.

By Senator Hopkins:

S. B. No. 237, A bill to be entitled "An Act prohibiting any owner or person having control of horses, mules, donkeys, cows, bulls, steers, hogs, sheep, goats or any other livestock from permitting or allowing the same to traverse or roam at large upon any designated State highway of this State unattended, providing a penalty and declaring an emergency."

Read and referred to Committee on State Highways and Motor Traffic.

By Senator Hopkins:

S. B. No. 238, A bill to be entitled "An Act to provide that no commissioners court or governing body of any city or town shall make contracts calling for or requiring the expenditure or payment of \$2,000.00 or more, without first submitting such proposed contract to competitive bids; requiring that notice of the time and place such bids will be received shall be published; prescribing the time for such publication; providing for posting of notices where no newspaper is published; requiring that certified check for five per cent of the amount of the bid shall be required to be filed with each bid; providing that such contract shall be awarded to the lowest and best responsible bidder, who shall be required to give bond in the full amount of the contract price; providing that where cost of the proposed improvements is to be paid by issuance of warrants due in future years, such notice to bidders

shall distinctly specify the amount of warrants, proposed maximum interest rate and proposed maximum maturity date; providing that in event fifty taxpayers of the county, city or town, file petition for an election to determine the issuance of bonds in lieu of the warrants proposed to be issued, it shall be the duty of the commissioners court of such county, or the governing body of such city or town, to order an election to determine whether or not bonds shall be voted and issued in lieu of the proposed warrants; prescribing the manner of ordering and holding such bond election; requiring competitive bids on all contracts executed by counties, cities or towns in excess of \$500.00 and less than \$2,000.00 to be let on competitive basis; providing that the provisions hereof shall not apply to work done under direct supervision of the commissioners court, or the governing body of any city or town, and paid for by the day, nor to contracts requiring professional skill or technical learning; declaring that contracts made without complying with the terms hereof shall be void and unenforceable; providing for the issuance of warrants to defray the ordinary charges or current expenses; authorizing the issuance of bonds by counties, cities or towns, for the purpose of refunding valid outstanding bonds and coupons due upon such bonded debt; restricting issuance of funding bonds by providing that no county, or city or town, shall have authority to issue bonds to cancel or retire any outstanding warrants or securities, other than bonds and matured bond coupons, except on following the procedure prescribed in this Act; enumerating public securities not affected by the provisions hereof; enacting provisions incident and necessary to the subject and purpose of this Act, and declaring an emergency."

Read and referred to Committee on Civil Jurisprudence.

By Senators Murphy and Beck:

S. B. No. 239, A bill to be entitled "An Act providing that the State Board of Control shall furnish proposals to those making application therefor in all cases where contracts are to be made; providing for an annual service charge for placing the names of prospective bidders on the State mailing list; allowing said Board to make a service charge for

proposals to those who are not on the mailing list, or to forego such charges and accept bids and award contracts where a hardship might be worked on a particular bidder or class of bidders; providing that the amount collected shall be deposited in the State Treasury in the name of the 'State Board of Control Special Service Account,' and used to defray all necessary charges and expenses in connection with the furnishing or sending out of said proposals, and declaring an emergency."

Read and referred to Committee on State Institutions and Departments.

By Senator Russek:

S. B. No. 240, A bill to be entitled "An Act amending Article 2558, Revised Civil Statutes, 1925; and declaring an emergency."

Read and referred to Committee on Banks and Banking.

By Senators DeBerry and Poage:

S. B. No. 241, A bill to be entitled "An Act to provide for the depositing with the State Treasurer of all funds received by or belonging to State departments, institutions, schools, colleges, universities, boards, bureaus, commissions or other agencies of the State government; providing for handling of trust funds as special funds in the State Treasury where no manner of management is provided for; providing for 'petty cash' or revolving funds for emergency needs; prohibiting deposits other than with the State Treasurer; providing for penalties for violation of this Act and fixing the venue of prosecutions in Travis County, and declaring an emergency."

Read and referred to Committee on State Institutions and Departments.

By Senator Greer:

S. B. No. 242, A bill to be entitled "An Act to provide an emergency appropriation of one million, five hundred eighty-two thousand, eight hundred ninety-one (\$1,582,891) dollars, or as much thereof as may be necessary, to be used for the payment of salary aid, high school per capita aid, industrial aid, tax supplementary aid, high school tuition aid, transportation aid, consolidation bonus, repealing all laws in conflict herewith; and declaring an emergency."

Read and referred to Committee on Finance.

By Senator Greer:

S. B. No. 243, A bill to be entitled "An Act providing that vocational education shall be a part of the public school system of Texas, and that it shall be the duty of the State Superintendent of Public Instruction to act as the administrative officer of all vocational education taught in the public schools in the State of Texas, and making it the duty of said administrative officer to appoint or employ such employees in the administration of vocational education as may be needed or necessary and as may be provided for by law, and declaring an emergency."

Read and referred to Committee on Educational Affairs.

By Senator Regan:

S. B. No. 244, A bill to be entitled "An Act authorizing water improvement districts to borrow money and create debts and obligations to fully carry out the purpose of their organization and to levy and collect taxes and to fix, levy and collect charges for the use of water and power and other services and to pledge same for the payment of debts and to provide for the government and operation of such districts and declaring an emergency."

Read and referred to Committee on Mining, Irrigation and Drainage.

By Senator Hornsby:

S. B. No. 245, A bill to be entitled "An Act to designate and fix the 3rd day of November as 'Father of Texas Day' in memory of Stephen F. Austin, the real and true Father of Texas."

Read and referred to Committee on State Affairs.

By Senators Small and Parr:

S. B. No. 246, A bill to be entitled "An Act to amend Article 5368, Revised Civil Statutes of Texas of 1925, so as to constitute the owner of the soil the agent of the State to institute and prosecute in his own name any suit or suits to set aside for fraud or other illegality or invalidity any sale or lease to any person, firm or corporation of the oil, gas or other minerals, on or under any such land, and to validate all suits, heretofore brought, for such purposes by the owner of the soil and authorize the continued prosecution to final

judgment of any such suits in the name of said owner and to make the said judgments rendered in said causes binding upon the State, and declaring an emergency."

Read and referred to Committee on Civil Jurisprudence.

By Senators Neal, Beck, Redditt, Parr, Russek, Moore:

S. B. No. 247, A bill to be entitled "An Act creating a physical restoration service for crippled children in the Vocational Rehabilitation Division of the State Department of Education; providing for the powers and duties of said service; granting unto said service power to establish diagnostic clinics and to designate hospitals for the care, treatment and hospitalization of crippled children; and to pay the costs thereof in cases of indigent children; designating the county judge as the agency to determine and certify who are indigent children, and to make the necessary appropriation for carrying out the provisions of this Act; and declaring an emergency."

Read and referred to Committee on Educational Affairs.

Senators Excused.

The following Senators were excused for the day:

Senator Greer, illness, on motion of Senator Poage.

Senator Woodul, important business, on motion of Senator Redditt.

Senator Woodward, important business, on motion of Senator Small.

S. C. R. No. 18.

Senator Fellbaum sent up the following resolution:

Whereas, As a result of our recent overwhelming National Democratic victory, our President-elect, the Honorable Franklin D. Roosevelt, will soon announce the personnel of his cabinet; and,

Whereas, It is the sense of this body that it would be exceedingly befitting that at least one woman should be chosen as a member thereof; and,

Whereas, No woman in America has rendered greater service to our party or contributed in greater measure to our recent National victory than Governor Nellie Tayloe Ross; now therefore, be it

Resolved, That the Senate of the Legislature of Texas, the House of

Representatives concurring, do hereby express the hope that our President-elect will give the name and merits of Governor Ross due consideration in the determination of the members of his cabinet.

FELLBAUM,
NEAL.

The resolution was read.

By unanimous consent, the rule requiring resolutions to be referred was suspended.

The resolution was adopted.

Message From the Governor.

To the Forty-third Legislature:

Gentlemen: I am informed by the State Treasurer and I have received like information from other reliable sources that the State Treasurer has on deposit with the Security Trust Company as a State depository One Million Four Hundred Ninety-six Thousand Eight Hundred Seventy-four Dollars (\$1,496,874.00). I am further informed that as security for said deposit the said Security Trust Company has on deposit with the State Treasurer various county, city and irrigation and other district bonds as well as joint stock land bank bond in the total sum of One Million Seven Hundred Twenty Thousand Six Hundred Thirteen Dollars (\$1,720,613.00). I am further informed that the real value of the above security is not in excess of an average of forty cents on the dollar, and perhaps less than that sum.

If my information is correct, then there is an impairment in security for the State deposits of some Eight Hundred Eight Thousand Six Hundred Twenty-nine Dollars (\$808,629.00), and as the Security Trust Company is now in liquidation, the State would probably lose anywhere from Eight Hundred Thousand to One Million Dollars.

I am also informed that although these funds are subject to check under the State Depository Law, the Security Trust Company is claiming an agreement with the State Treasurer to withhold issuing any checks against said fund.

I call these matters to your attention as they affect the tax rate and the prompt payment of State warrants and I deem it my duty to advise you of conditions so that you may take such action as to you may

seem best for the protection of the funds of the State.

Respectfully submitted,
MIRIAM A. FERGUSON,
Governor of Texas.

Read and referred to Committee on State Affairs.

House Bill No. 263.

The Chair laid before the Senate, by unanimous consent, the following bill:

By Mr. Engelhard and Mr. Scott: H. B. No. 263, A bill to be entitled "An Act amending Section 7-j, of Chapter 13, Acts of the Third Called Session, Forty-second Legislature (relating to appropriations of moneys to County and Road District, Highway Fund), and declaring an emergency."

The bill was read second time and passed to third reading.

On motion of Senator Poage, the constitutional rule requiring bills to be read on three several days was suspended and H. B. No. 263 was put on its third reading and final passage, by the following vote:

Yeas—28.

Beck.	Oneal.
Blackert.	Pace.
Collie.	Parr.
Cousins.	Patton.
DeBerry.	Poage.
Duggan.	Purl.
Fellbaum.	Rawlings.
Holbrook.	Redditt.
Hopkins.	Regan.
Hornsby.	Russek.
Martin.	Sanderford.
Moore.	Small.
Murphy.	Stone.
Neal.	Woodruff.

Absent—Excused.

Greer.	Woodward.
Woodul.	

Read third time and finally passed by the following vote:

Yeas—28.

Beck.	Holbrook.
Blackert.	Hopkins.
Collie.	Hornsby.
Cousins.	Martin.
DeBerry.	Moore.
Duggan.	Murphy.
Fellbaum.	Neal.

Oneal.	Redditt.
Pace.	Regan.
Parr.	Russek.
Patton.	Sanderford.
Poage.	Small.
Purl.	Stone.
Rawlings.	Woodruff.

Absent—Excused.

Greer.	Woodward.
Woodul.	

Senate Bill No. 129.

On motion of Senator DeBerry, S. B. No. 129, on the same subject as H. B. No. 263, was laid on the table, subject to call.

Senate Joint Resolution No. 1.

The Chair laid before the Senate on its second reading the following resolution:

By Senator Oneal and Duggan:

S. J. R. No. 1, Proposing an amendment to Section 9 of Article 8 of the Constitution of the State of Texas.

Providing that for all years after 1934 the State tax on property, exclusive of the tax necessary to pay the public debt and the taxes provided for the benefit of public free schools, and of taxes for the Confederate Pension, shall never exceed fifteen cents on the one hundred dollar valuation, and providing for municipal taxation as is now provided in Section 9 of Article 8, of the Constitution of the State of Texas.

Read second time.

Senator Hopkins sent up the following amendment:

Amend S. J. R. No. 1 by striking out all of lines 39 to 51 inclusive on page 1.

HOPKINS.

The amendment was read.

Senator Oneal asked unanimous consent to lay the resolution on the table subject to call.

Objection was heard.

On motion of Senator Hopkins, the resolution was re-committed to the Committee on Constitutional Amendments.

Senate Joint Resolution No. 2.

The Chair laid before the Senate on its second reading the following resolution:

By Senators Purl, Collie, Moore, DeBerry, Beck, Woodward, Rawlings, Poage, Greer, Oneal, Hornsby, Neal, Small, Russek, Hopkins, Stone, Fellbaum, Regan, Redditt, Holbrook, Murphy, Sanderford, Patton, Pace, Duggan, Blackert and Woodruff:

S. J. R. No. 2, A joint resolution Proposing an amendment to the Constitution of the State of Texas by adding to Article XVI another section, Section 61, abolishing the fee system of compensating State, district, county and precinct officers, and providing for the payment of salaries to said officers except public weighers, notaries public and county surveyors.

Read second time and passed to engrossment by the following vote:

Yeas—28.

Beck.	Oneal.
Blackert.	Pace.
Collie.	Parr.
Cousins.	Patton.
DeBerry.	Poage.
Duggan.	Purl.
Fellbaum.	Rawlings.
Holbrook.	Redditt.
Hopkins.	Regan.
Hornsby.	Russek.
Martin.	Sanderford.
Moore.	Small.
Murphy.	Stone.
Neal.	Woodruff.

Absent—Excused.

Greer.	Woodward.
Woodul.	

Senate Joint Resolution No. 11.

The Chair laid before the Senate on its second reading the following resolution:

S. J. R. No. 11, A joint resolution Proposing an amendment to the Constitution of Texas, by amending Article IV, Section 26, changing the manner of appointment of notaries public.

Read second time and passed to engrossment by the following vote:

Yeas—27.

Beck.	Hornsby.
Blackert.	Martin.
Collie.	Moore.
Cousins.	Murphy.
DeBerry.	Neal.
Duggan.	Oneal.
Fellbaum.	Pace.
Holbrook.	Parr.

Patton.	Russek.
Poage.	Sanderford.
Purl.	Small.
Rawlings.	Stone.
Redditt.	Woodruff.
Regan.	

Nays—1.

Hopkins.

Absent—Excused.

Greer.	Woodward.
Woodul.	

Senate Bill No. 107.

The Chair laid before the Senate on its second reading the following bill:

By Senator DeBerry:

S. B. No. 107, A bill to be entitled "An Act amending Chapter 91, Acts First Called Session, Fortieth Legislature, as amended by Chapter 77, Acts First Called Session, Forty-first Legislature, as amended by Chapter 164, Acts Regular Session Forty-second Legislature and declaring an emergency."

The committee report was adopted.

The bill was read second time and passed to engrossment.

On motion of Senator DeBerry the constitutional rule requiring bills to be read on three several days was suspended and S. B. No. 107 was put on its third reading and final passage by the following vote:

Yeas—28.

Beck.	Oneal.
Blackert.	Pace.
Collie.	Parr.
Cousins.	Patton.
DeBerry.	Poage.
Duggan.	Purl.
Fellbaum.	Rawlings.
Holbrook.	Redditt.
Hopkins.	Regan.
Hornsby.	Russek.
Martin.	Sanderford.
Moore.	Small.
Murphy.	Stone.
Neal.	Woodruff.

Absent—Excused.

Greer.	Woodward.
Woodul.	

Read third time and finally passed by the following vote:

Yeas—28.

Beck.	Oneal.
Blackert.	Pace.
Collie.	Parr.
Cousins.	Patton.
DeBerry.	Poage.
Duggan.	Purl.
Fellbaum.	Rawlings.
Holbrook.	Redditt.
Hopkins.	Regan.
Hornsby.	Russek.
Martin.	Sanderford.
Moore.	Small.
Murphy.	Stone.
Neal.	Woodruff.

Absent—Excused.

Greer.	Woodward.
Woodul.	

Message From the House.

Hall of the House of Representatives,
Austin, Texas, Feb. 20, 1933.
Hon. Edgar E. Witt, President of the Senate.

Sir: I am directed by the House to inform the Senate that the House has concurred in Senate amendments to H. C. R. No. 22 by a viva voce vote.

The House has passed the following bill and resolutions:

H. B. No. 6, A bill to be entitled "An Act to regulate the granting of pipeline right-of-way easements, and the terms thereof and the rates to be charged therefor, across public lands of Texas; providing for the disposition of proceeds received from such easements, etc., and declaring an emergency."

H. C. R. No. 5, A concurrent resolution granting permission to J. D. Davis to sue the State for personal injuries.

S. C. R. No. 17, A concurrent resolution designating an official band to accompany the All-Texas special train to Washington to attend the Democratic inaugural ceremonies.

Respectfully submitted,
LOUISE SNOW PHINNEY,
Chief Clerk, House of Representatives.

Senate Bill No. 82.

The Chair laid before the Senate on its second reading the following bill:

By Senators Beck, Purl, Moore, DeBerry and Hornsby:

S. B. No. 82, A bill to be entitled "An Act amending Article 348 of

the Code of Criminal Procedure, relating to summoning a grand jury; and declaring an emergency."

Read second time.

Senator Martin sent up the following amendment:

Amend S. B. No. 82 by adding after the words "Jury Commission" in line 18 the words "selected by the court" and substituting the words "which Commission" for the word "who" in line 18.

MARTIN.

Read and adopted.

The bill as amended was passed to engrossment.

On motion of Senator Purl the constitutional rule requiring bills to be read on three several days was suspended and S. B. No. 82 was put on its third reading and final passage by the following vote:

Yeas—28.

Beck.	Oneal.
Blackert.	Pace.
Collie.	Parr.
Cousins.	Patton.
DeBerry.	Poage.
Duggan.	Purl.
Fellbaum.	Rawlings.
Holbrook.	Redditt.
Hopkins.	Regan.
Hornsby.	Russek.
Martin.	Sanderford.
Moore.	Small.
Murphy.	Stone.
Neal.	Woodruff.

Absent—Excused.

Greer.	Woodward.
Woodul.	

Read third time and finally passed by the following vote:

Yeas—28.

Beck.	Oneal.
Blackert.	Pace.
Collie.	Parr.
Cousins.	Patton.
DeBerry.	Poage.
Duggan.	Purl.
Fellbaum.	Rawlings.
Holbrook.	Redditt.
Hopkins.	Regan.
Hornsby.	Russek.
Martin.	Sanderford.
Moore.	Small.
Murphy.	Stone.
Neal.	Woodruff.

Absent—Excused.

Greer. Woodward.
Woodul.

Senate Bill No. 37.

The Chair laid before the Senate on its second reading the following bill:

By Senator Moore:

S. B. No. 37, A bill to be entitled "An Act prohibiting any judge or officer of an election from betting or wagering on the election or nomination of any person; prohibiting betting or wagering on the number of votes polled or cast, or to be polled or cast in the precinct or voting box in which any officer is serving in certain cases; prescribing offenses and punishment; and declaring an emergency."

Read second time.

On motion of Senator Moore, the bill was laid on the table subject to call.

Senate Simple Resolution No. 48.

The Chair laid before the Senate by unanimous consent:

S. S. R. No. 48, Providing for creation of a Senate Committee on Game and Fish.

By unanimous consent the rule requiring committee reports to lie over one day was suspended.

The resolution was read.

Senator Small received unanimous consent to enlarge the committee membership from five to seven.

The resolution as amended was adopted by the following vote:

Yeas—30.

Beck.	Oneal.
Blackert.	Pace.
Collie.	Parr.
Cousins.	Patton.
DeBerry.	Poage.
Duggan.	Purl.
Fellbaum.	Rawlings.
Greer.	Redditt.
Holbrook.	Regan.
Hopkins.	Russek.
Hornsby.	Sanderford.
Martin.	Small.
Moore.	Stone.
Murphy.	Woodruff.
Neal.	Woodward.

Absent—Excused.

Woodul.

Senate Bill No. 189.

The Chair laid before the Senate on its second reading the following bill:

By Senator Parr:

S. B. No. 189, A bill to be entitled "An Act making an emergency appropriation out of the General Revenue of the State for the purpose of conducting a poison bait spray campaign in the lower Rio Grande Valley to control and eradicate and prevent the spread to other parts of the State of the Mexican Fruit Fly and to meet the emergency appropriation for this campaign made by the United States government contingent upon the State of Texas doing its share in the bait spray campaign and to insure the continuance of the interstate trade relations now enjoyed by Texas."

Read second time.

On motion of Senator Parr, the bill was laid on the table subject to call.

Senate Bill No. 191.

The Chair laid before the Senate on its second reading the following bill:

By Senator Neal:

S. B. No. 191, A bill to be entitled "An Act authorizing school trustees to issue interest-bearing warrants in payment of salaries of employees; specifying that the rate of interest shall not exceed six per cent per annum; limiting the amount of warrants to be issued; providing for official notice of the issuance of such warrants and for official notice when these warrants can be cashed; giving such warrants preference over ones issued for purposes other than payment of salaries; and declaring an emergency."

The bill was read second time and passed to engrossment.

The motion of Senator Neal to suspend the constitutional rule requiring bills to be read on three several days was lost by the following vote:

Yeas—16.

Beck.	Pace.
Blackert.	Parr.
Duggan.	Rawlings.
Fellbaum.	Redditt.
Hornsby.	Regan.
Neal.	Sanderford.

Small.
Stone.

Woodruff.
Woodward.

Nays—9.

Collie.
Cousins.
DeBerry.
Holbrook.
Martin.

Moore.
Murphy.
Poage.
Purl.

Absent.

Greer.
Hopkins.
Oneal.

Patton.
Russek.

Absent—Excused.

Woodul.

(Four-fifths vote required.)

Senate Bill No. 37.

Senator Moore called up from the table S. B. No. 37.

Senator Martin sent up the following amendments:

Amend S. B. No. 37 by adding at the end of line 16 the following words "to any office."

MARTIN.

Read and adopted.

Amend S. B. No. 37, by adding after the word "years" line 21 the following "for any offense enumerated in this Act a conviction may be had upon the unsupported evidence of an accomplice or participant."

MARTIN.

Read and adopted.

The bill as amended was passed to engrossment.

On motion of Senator Moore the constitutional rule requiring bills to be read on three several days was suspended and S. B. No. 37 was put on its third reading and final passage, by the following vote:

Yeas—30.

Beck.
Blackert.
Collie.
Cousins.
DeBerry.
Duggan.
Fellbaum.
Greer.
Holbrook.
Hopkins.
Hornsby.
Martin.
Moore.
Murphy.
Neal.

Oneal.
Pace.
Parr.
Patton.
Poage.
Purl.
Rawlings.
Redditt.
Regan.
Russek.
Sanderford.
Small.
Stone.
Woodruff.
Woodward.

Absent—Excused.

Woodul.

Read third time and finally passed by the following vote:

Yeas—30.

Beck.
Blackert.
Collie.
Cousins.
DeBerry.
Duggan.
Fellbaum.
Greer.
Holbrook.
Hopkins.
Hornsby.
Martin.
Moore.
Murphy.
Neal.

Oneal.
Pace.
Parr.
Patton.
Poage.
Purl.
Rawlings.
Redditt.
Regan.
Russek.
Sanderford.
Small.
Stone.
Woodruff.
Woodward.

Absent—Excused.

Woodul.

Motion to Refer.

On motion of Senator Parr, S. B. No. 189 was referred to the Committee on Finance.

Senate Bill No. 151.

The Chair laid before the Senate on its second reading the following bill:

By Senator Redditt:

S. B. No. 151, A bill to be entitled "An Act to make the civil judiciary system of the State more fully self-sustaining, by providing for the collection of certain additional fees for the filing of original petitions in all civil suits filed in the District Courts, etc., and declaring an emergency."

Read second time.

On motion of Senator Rawlings, the bill was laid on the table subject to call.

Bills Signed.

The Chair, Lieutenant Governor Edgar E. Witt, gave notice of signing, and did sign, in the presence of the Senate, after their captions had been read, the following bills and resolutions:

H. B. No. 98.	H. C. R. No. 30.
H. B. No. 222.	H. C. R. No. 29.
H. B. No. 121.	H. C. R. No. 28.

House Bills Referred.

H. B. No. 6 read and referred to Committee on Public Lands and Land Office.

H. C. R. No. 5, read and referred to Committee on Civil Jurisprudence.

Free Conference Report Adopted.

The Chair laid before the Senate, by unanimous consent, the Free Conference Committee report on:

H. C. R. No. 9, Relating to joint rules.

The report was adopted by the following vote:

Yeas—24.

Beck.	Neal.
Blackert.	Pace.
Collie.	Parr.
Cousins.	Patton.
Duggan.	Redditt.
Fellbaum.	Regan.
Greer.	Russek.
Holbrook.	Sanderford.
Hopkins.	Small.
Hornsby.	Stone.
Martin.	Woodruff.
Murphy.	Woodward.

Nays—6.

DeBerry.	Poage.
Moore.	Purl.
Oneal.	Rawlings.

Absent—Excused.

Woodul.

Committee Appointed.

The Chair announced the appointment of the following committee relative to the Texas-Oklahoma boundary settlement:

Senate members under S. C. R. No. 10:

Senators Small and Woodward.

Committee Instructed to Report.

Senator Woodward moved that the Committee on Governor's Nominations be instructed to report on the nomination of Mr. F. L. Denison by Wednesday morning at 10 o'clock.

Senator Sanderford moved as a substitute that the committee report by Thursday morning at 10 o'clock.

Senator Woodward accepted the substitute motion and the substitute motion was adopted.

Adjournment.

On motion of Senator DeBerry the Senate, at 12:27 o'clock p. m., adjourned until 10 o'clock tomorrow morning.

APPENDIX.**Petitions and Memorials.**

Austin, Texas, Feb. 17, 1933.

Hon. Edgar E. Witt, Lieutenant Gov.; Hon. Bob Barker, Secretary, and Members of the Texas Senate. Austin, Texas.

We wish to express to you our sincere appreciation for your expression of sympathy to us, in this hour of deepest sorrow, upon the death of our mother, Mrs. M. L. DeBerry.

Our mother was true to herself, her family, her government, and her God. Many of you she knew personally; in each of you she had an individual and collective interest; she understood, appreciated and loved you.

Your flowers were typical of our mother as she was the sweetest flower of them all. Your words of sympathy, your expressions of friendship have been and will continue to be a great comfort to us.

Her Sons and Daughter.

Committee on Enrolled Bills.

Committee Room,

Austin, Texas, Feb. 17, 1933.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Enrolled Bills, have had S. C. R. No. 10, carefully examined and compared and find same correctly enrolled.

GREER, Chairman.

Committee Reports.

Committee Room,

Austin, Texas, Feb. 15, 1933.

Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on State Highways and Motor Traffic, to whom was referred

H. B. No. 15 (Chauffeur's licenses of truck drivers).

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass with committee amendments and be printed.

RAWLINGS, Chairman.

Committee Amendment No. 1.

Amend H. B. No. 15 by adding a comma and the words "and it is so enacted" at the end of the emergency clause.

Committee Amendment No. 2.

Amend H. B. No. 15 by striking out the word "driver's" in Section 2 thereof, and inserting in lieu thereof the word "chauffeur's."

Committee Amendment No. 3.

Amend H. B. No. 15 by striking out the last paragraph of Section 1, and inserting in lieu thereof the following:

"Except as otherwise provided herein, it shall be unlawful for any person to operate or permit to be operated any commercial motor vehicle for hire or lease upon the highways of this State without first having obtained a chauffeur's license as provided in Article 6687 of the Revised Civil Statutes of Texas, 1925; and provided, further, however, the driver or operator of such vehicle who has secured a driver's license under the provisions of any other statute of this State, shall not be required to secure the chauffeur's license under Article 6687 of the Revised Civil Statutes of Texas, 1925."

Committee Room,
Austin, Texas, Feb. 15, 1933.
Hon. Edgar E. Witt, President of the Senate.

Sir: We, your Committee on Rules, to whom was referred S. R. No. 48,

Have had the same under consideration, and I am instructed to report it back to the Senate with the recommendation that it do pass.

HORNSBY, Chairman.

RULING AND BRIEFS ON POWER OF GOVERNOR TO RE-SUBMIT NOMINATIONS.

Point of Order

As to Right of Governor to Re-nominate a Person Previously Rejected.

Senator Woodward raised the point of order that Mr. Frank L. Denison heretofore appointed by the Governor on February 1st to be a member of the State Highway Commission, having been rejected by the Senate on February 8th and more than two days having elapsed since the final action in refusing to confirm said appointment, the Governor is without power to re-submit his name to the Senate for further action on the subsequent appointment and that the

Committee on Governor's Nominations, nor the Senate, would have jurisdiction to consider the appointment and would be without power to confirm him at this time. No member, within the time allowed, having made any motion to reconsider the vote by which Mr. Denison failed of confirmation, no such motion can now be made, and the Governor is without power to abrogate the rule of the Senate which fixes the time for reconsideration by sending up the name of the same person after he was once rejected and the rejection not reconsidered, or set aside.

Ruling.

The case of United States vs. Smith (286 U. S. 6) is not in point for the reason that same is determined solely by the conduct of the Senate of the United States under its rules, and further for the reason that it deals with a confirmation and not a rejection.

As to the precedent for the right to re-nominate previously rejected persons by the President of the United States (there being no constitutional prohibition as to such re-nominations) may be cited:

(1) Action of Andrew Jackson, President of the United States, in the Session of Congress of 1833, at which time the name of Hon. H. D. Gilpin, Jno. T. Sullivan, Peter Wager and Hugh McEldery were nominated by him and sent to the Senate for confirmation as Directors of the Bank of the United States. The Senate rejecting the confirmation of these four men, the names were sent back a second time during the same session by the President, together with a message from him stating the reason for the return of such names. Reference: Benton's 30 Year's View, Vol. 1, pages 385-392.

(2) The submission by President John Tyler on March 2, 1843, of the name of Caleb Cushing for Secretary of the Treasury, the rejection of such nomination on the same day, its return to the Senate by the President a second time on the same day, a second rejection and a re-submission of the same name on the same day for the same place, and a third rejection thereof. Reference: Senate Executive Journal, Vol. 6, pages 176-191.

(3) The submission by Calvin

Coolidge on March 5, 1925, of the name of Charles Beecher Warren, for confirmation as Attorney General of the United States, its rejection by the Senate on March 10, 1925, and its re-submission by the President for the same place on March 12, 1925, and its second rejection on March 26, 1925. Reference: Congressional Record, Vol. 67, page 228.

(4) Nominations made to the Senate by the Presidents Harding and Coolidge as set out in Willoughby on the Constitution of the United States, Vol. 3, pages 1508-1509, pertaining to the appointment of Walter L. Cohen for Collector of Customs at New Orleans in 1922.

In the committee report on the bank directors re-nominated by President Jackson, the committee expressed its disapproval of the general policy of making re-nominations but admitted the right of the President to do so.

The provision of our Constitution that in event of rejection by the Senate of a nomination the Governor shall "without delay make *further* nominations" is the only language that can be contended as sustaining the point of order. The Chair thinks that this provision when considered in connection with the subsequent provision of said section to the effect that "should there be no confirmation during a session of the Senate the Governor shall not *thereafter* appoint any person to fill such vacancy who has been rejected by the Senate," that the use of the term "further nominations" is not conclusive that same was intended to deny to the Governor the right to reappoint during the session a person who had been rejected, and that the only certain denial to him was the right to reappoint a rejected person after the ending of the session of the Senate, which had rejected such nomination.

And still more difficulty is presented in concluding that the use of the words "further nominations," means "other" nominations when it would have been just as easy for the authors of said section to have used the word "other" if that had been meant; and still additional difficulty is found in believing that by the use of the word "further" that it was intended to deny the Governor the right to re-nominate the same person when reference is made

to the provisions in the previous Constitutions of Texas dealing with the matter of filling vacancies by the Governor, in every one of which Constitutions it was definitely provided that the Governor could not re-nominate to the same session persons who had been rejected. We must believe that in the preparation of the section of our present Constitution relied upon, the framers of same had before them the previous Constitutions of Texas and had some reason for not carrying forward into the present Constitution the language of same; which if it had been brought forward would have been plainly and unequivocally determinative of the question in keeping with the contention now being made in support of the point of order.

(See exhibit for previous Constitutions.)

The Chair thinks that Senate Rule No. 52, and the constitutional provision authorizing the same, if having any application to the question, would only apply to the question of the consideration by the Senate of the appointee involved and not to the right of the Governor to make the same.

The wisdom or folly of permitting the Governor to re-nominate a person, after a previous nomination has been rejected, is not involved in the question. The sole question is whether or not the Governor has the legal right so to do. The question presented is neither one of policy (nor of politics) but is wholly a judicial one. Unless, the Governor is prohibited by the Constitution or statutes from making such re-nomination he is, of course, entitled so to do.

The Chair overrules the point of order and refers the communication of the Governor making a second nomination of Frank L. Denison to the Committee on the Governor's Nominations.

EDGAR E. WITT,
Lieutenant Governor of Texas.

Senate Rule 52—Reconsideration.

After a question shall have been decided, either in the affirmative or negative, any member voting with the prevailing side may, on the same day in which the vote was taken, or within the next succeeding day of actual session, move the reconsideration thereof. When a bill, resolu-

tion, report, amendment, order or message upon which a vote was taken shall have gone out of the possession of the Senate and have been communicated to the House of Representatives, the motion to reconsider shall be accompanied by a motion to request the House to return same, which last motion shall be acted upon, and if determined in the negative shall be a final disposition of the motion to reconsider.

[The motion to reconsider may be made on the next business day.

Where the next day there was no quorum, Senator Bailey (presiding) ruled that the motion to reconsider could be made the next day business was actually transacted. (38th Reg.)

The motion to reconsider (and to reconsider and spread on the Journal) must be made before the bill or resolution has advanced to a new stage of consideration; e. g., to another reading.

Senator Parr moved to reconsider and spread the motion on the Journal, the vote by which the 75c sulphur tax amendment was adopted.

Senator Pollard raised the point of order that it would first be necessary to reconsider the vote by which the bill was engrossed.

The Chair, Lieutenant Governor Edgar E. Witt, sustained the point of order. (42nd Reg.)

Reconsideration.—Where the yeas and nays have not been ordered recorded in the Journal, any member, irrespective of whether he voted with the prevailing side or not, may make the motion to reconsider (V, 5611-5613, 5689); but a member who was absent or who was paired in favor of the majority contention, and did not vote, may not make the motion (V, 5614, 5619).

While the motion to reconsider has high privilege for entry, it may not be considered while another question is before the Senate (V, 5673, 5676). When it relates to a bill belonging to a particular class of business, consideration of the motion is in order only when that class of business is in order (V, 5677-5681).

When a motion is made to reconsider the vote on a bill which has gone to the House, a motion to recall the bill is privileged (V, 5669-5671).

The motion to reconsider is adopted by a majority vote, even when the vote reconsidered requires

two-thirds for affirmative action (II, 1656; V, 5617, 5618).

The vote by which the previous question was ordered can only be reconsidered one time (V, 5655), and, as previously stated, the motion to reconsider cannot be applied to a vote by which the previous question was ordered after the previous question has been partially executed (V, 5653, 5654).

A motion to reconsider cannot be applied to a negative vote on adjournment, for recess, or suspension of the rules (V, 5625, 5645, 5646).

A motion to reconsider having prevailed and the vote again taken on the proposition, another motion to reconsider is not in order unless the nature of the proposition has been changed by amendments (V, 5685-5688).

The effect of a motion to reconsider is to suspend the original proposition, or, in other words, to hold the matter in abeyance pending the further pleasure of the Senate. However, should the Legislature adjourn finally, leaving undisposed of a motion to reconsider, and the bill, by oversight, should be enrolled, properly signed by the presiding officers of the two Houses, and approved by the Governor, it would undoubtedly become a law, although a motion to reconsider the vote by which it was finally passed remained undisposed of (V, 5704).

When a motion to reconsider is carried, the question immediately recurs on the proposition reconsidered, and when a vote adopting an amendment is reconsidered the amendment simply becomes the pending amendment (V, 5703, 5704).

A motion to reconsider is debatable unless the proposition upon which the motion to reconsider is made is not debatable (V, 5694-5699).

Although a bill may have gone to the other House or to the Governor or the Senate has informed the House that it has agreed to the House amendments to a Senate bill, the motion to reconsider may be made if made within the time prescribed by the rules (V, 5666-5668, 5672).

For Practice of Reconsideration and Table, see Hinds' Precedents, Vol. 5, Sec. 5637. Development of Sec., 5634-5639.]

Exhibit.

"Constitution of the Republic of Texas."

Article VI.

Section 6. The President shall have power to fill all vacancies that may happen during the recess of the Senate: * * * and should the Senate reject the same, the President shall not re-nominate the same individual to the same office.

"Constitution of the State of Texas, 1845."

Article V.

Section 20. Nominations to fill all vacancies that may have occurred during the recess shall be made to the Senate during the first ten days of its session. And should any nomination so made be rejected the same individual shall not again be nominated during the session to fill the same office * * *.

"Constitution of the State of Texas, 1861."

Article V.

Section 20. Nominations to fill vacancies that may have occurred during the recess shall be made to the Senate during the first ten days of its session. And should any nomination so made be rejected, the same individual shall not again be nominated during the session to fill the same office. * * *

"Constitution of the State of Texas of 1866."

Article V.

Section 20. Nominations to fill all vacancies that may have occurred during the recess, shall be made to the Senate during the first ten days of its session. And should any nomination so made be rejected, the same individual shall not again be nominated during the session to fill the same office; and should the Governor fail to make nominations to fill any vacancy during the session of the Senate such vacancy shall not be filled by the Governor until the next meeting of the Senate.

"Constitution of the State of Texas of 1869."

Article IV.

Section 12. Nominations to fill vacancies occurring in the recess

of the Legislature, shall be made by the Governor during the first ten days of its session; and should any such nomination be rejected, the same person shall not again be nominated during the session to fill the same office.

"Constitution of the State of Texas of 1876."

Article IV.

Section 12. Filling vacancies.—All vacancies in State or district offices, except members of the Legislature, shall be filled, unless otherwise provided by law, by appointment of the Governor, which appointment, if made during its session, shall be with the advice and consent of two-thirds of the Senate present. If made during the recess of the Senate, the said appointee, or some other person to fill such vacancy, shall be nominated to the Senate during the first ten days of its session. If rejected said office shall immediately become vacant, and the Governor shall, without delay make further nominations, until a confirmation takes place. But should there be no confirmation during the session of the Senate, the Governor shall not thereafter appoint any person to fill such vacancy who has been rejected by the Senate; but may appoint some other person to fill the vacancy until the next session of the Senate or until the regular election to said office, should it sooner occur. Appointments to vacancies in offices elective by the people shall only continue until the first general election thereafter.

Brief of Senator Hopkins.

Austin, Texas, Feb. 13, 1933.

Hon. Edgar E. Witt, President of the Senate.

Sir: In accordance with your verbal request, we herewith submit a brief statement and list of authorities in support of our contention in opposition to the point of order raised by the Senator from Coleman against the re-submission by Governor Miriam A. Ferguson in her second message the name of the Hon. Frank Denison of Temple, Texas, as Chairman of the State Highway Commission.

The point of order being based on Section 12, Article 4, of our State Constitution, we answer as follows:

1. Section 12, Article 4, deals

with confirmation by the Senate, the manner thereof and the limitation of the Governor's power to appoint only as it applies to the vacancies in the State or District offices. In connection therewith, we respectfully direct your attention to the caption of the Section, viz.: "Sec. 12. Governor to Fill Vacancies in State and District Offices." The contents and context of this section clearly show that each and every sentence and each and every provision thereof plainly deals with vacation appointments only; and, this being true, then any and all limitations on the Governor's power and right to submit a second time a name first rejected are not pertinent to the fact situation existing here, Mr. Denison's appointment being not a vacation appointment. Therefore there is no limitation on the Chief Executive as to making an appointment of this nature other than such, if any, as may be contained in the statute creating the position to be filled.

2. Article 6664, Revised Civil Statutes of 1925, provides among other things, the following, viz.: "With the advice and consent of the Senate, the Governor shall biennially appoint one member to serve for a term of six years." We submit in connection with the statement hereinabove made as to Section 12, Article 4 of the Constitution, that since Article 6664 of the statutes stipulates only that the advice and consent of the Senate must be obtained for confirmation and there is no other limitation on the power of the Governor to appoint, there can be no limitation on the power or right of Governor Ferguson to reappoint Mr. Denison, the statute being controlling under the facts existing and containing no such limitation.

3. As to the precedents substantiating the action of the Governor cited by we of the opposition to the point of order, the following are submitted:

(1) Action of Andrew Jackson, President of the United States, in the session of Congress of 1833, at which time the name of Hon. H. D. Gilpin, Jno. T. Sullivan, Peter Wager and Hugh McEldery were nominated by him and sent to the Senate for confirmation as directors of the Bank of the United States. The Senate rejecting the confirmation of these four men, the names were sent back a second time during the same session by

the President, together with a message from him stating the reason for the return of such names. Reference: Benton's 30 Years View, Vol. 1, pages 385-392.

(2) The submission by President John Tyler on March 2, 1843, the name of Caleb Cushing for Secretary of the Treasury, the rejection of such nomination on the same day, its return to the Senate by the President a second time on the same day, a second rejection and a resubmission of the same name on the same day for the same place, and a third rejection thereof. Reference: Senate Executive Journal. Vol. 6, pages 176-191.

(3) The submission by Calvin Coolidge on March 5, 1925, of the name of Chas. Beecher Warren, for confirmation as Attorney General of the United States, its rejection by the Senate on March 10, 1925, and its re-submission by the President for the same place on March 12, 1925, and its second rejection on March 26, 1925. Reference: Congressional Record, Vol. 67, p. 228.

(4) Nominations made to the Senate by Presidents Harding and Coolidge as set out in Willoughby on the Constitution of the United States, Vol. 3, p. 1508-1509, pertaining to the appointment of Walter L. Cohen for Collector of Customs at New Orleans in 1922.

4. Section 12, Article 4, of the State Constitution contains no express inhibitions or prohibition of any sort pertaining to the fundamental right of the Chief Executive of this State to submit the same name twice for the same place during the same session. Proponents of the point of order have not so argued.

5. To sustain the point of order and to establish such a precedent is to shear the present Chief Executive of this State and all future governors of an inalienable constitutional right and to subject such future Chief Executives to intimidation by future Senates, in that it would force consultation by the Governor with members of the Senate prior to the submission of any appointee for confirmation.

6. Article 2, Section 1 of the Constitution divides the three several departments of Government into three separate and distinct parts, the Executive, the Legislative and the

Judicial. The whole spirit of the Constitution and its general interpretation require that the action of each be separate and distinct, one not contingent or dependent upon the other. The second message of the Chief Executive re-submitting the name of the Hon. Frank Denison is an executive act, the act of the Chief Executive of Texas; and the Legislature of Texas, particularly the Senate, cannot interfere with the submission of such message in the true performance of its legislative capacity and can only handle such message in due course in accordance with the said rules of the Senate.

7. Rule 52 of the Senate of the Forty-third Legislature in regard to reconsideration is neither pertinent nor applicable, in that it can be invoked, if at all, only as it should apply to the first message submitted by the Governor, and cannot legally or properly be invoked as to the second message, this later message being new matter entirely and not susceptible to the invoking of Rule 52. It is further submitted in this connection that executive sessions in the handling of Governor's nominations are not controlled by the rules and that such procedure as included in Rule 52 is pertinent and applicable only to legislation pertaining to bills, resolutions, etc., in regular legislative procedure.

8. The case of the United States vs. Geo. Otis Smith, Reported 286 U. S. Page 6, is not applicable to the point of order as submitted by proponents thereof in that the opinion of Justice Brandeis was rendered based upon a quo warranto proceeding, originating in the Court of Appeals in the District of Columbia, and which state of facts therein were that the name of Mr. Smith had been by the President submitted to the Senate, confirmed, such confirmation certified to the President, commission issued to Mr. Smith and the entrance by him on his active duties as a member of the Federal Power Commission. The Senate thereafter attempted to recall his name from the President; and, failing, quo warranto proceedings were instituted. Nowhere in such proceedings were the questions raised or passed upon by the Supreme Court as to the Chief Executive's right to re-submit the same name for the same place during the same session. Such case,

by its facts and under the opinion rendered, is not parallel to or applicable to the facts of the situation with which the Senate of Texas is now confronted.

It is therefore respectfully submitted that to sustain the point of order pending is to read into the Constitution that which is not provided therein, to override existing authorities and precedents in point, and to establish for future generations a dangerous public policy, destroying or tending to destroy the inalienable right of the Chief Executive of this State. We, therefore, respectfully submit the point of order is not well taken and should by the Chair be overruled.

Respectfully submitted,
HOPKINS.

Brief of Senator Woodward.

In Re: Point of order raised by the Senator from Coleman (Senator Woodward) on the power of the Governor to re-submit the name of Hon. Frank L. Denison to the Senate for confirmation, the confirmation of the said Frank L. Denison having already been rejected by the Senate and no motion having been made as permitted by the rules of the Senate within the time fixed by the rules to reconsider the vote by which his confirmation had been refused, and on the power of the Senate to further consider the message reappointing said Denison.

Argument in Support of the Point of Order.

The point of order urged by Senator Woodward was submitted in writing and is as follows:

"Senator Woodward raised the point of order that Mr. Frank L. Denison heretofore appointed by the Governor on February 1, to be a member of the State Highway Commission, having been rejected by the Senate on February 8th and more than two days having elapsed since the final action in refusing to confirm said appointment, the Governor is without power to re-submit his name to the Senate for further action on the subsequent appointment and that the Committee on Governor's Nominations, nor the Senate, would have jurisdiction to consider the appointment and would be without power to confirm him at this time; no member, within the

time allowed, having made any motion to reconsider the vote by which Mr. Denison failed of confirmation, no such motion can now be made and the Governor is without power to abrogate the rule of the Senate which fixes the time for reconsideration by sending up the name of the same person after he was once rejected and the rejection not reconsidered, or set aside."

In order to grasp the forces of the point of order it is necessary to state: The undisputed facts are briefly stated as follows:

The Governor, in writing, notified the Senate on February 1, 1933, of her appointment of Hon. Frank L. Denison of Bell County as Chairman of the State Highway Commission, his term to become effective February 15, 1933. The message carrying the appointment was received by the Senate and referred to the Committee on Governor's Nominations which in due time reported thereon, recommending that he be confirmed.

Thereafter, on February 8th the Senate in executive session rejected the nomination and refused to confirm the appointment, and the Clerk of the Senate on that day notified the Governor in writing of the action of the Senate in refusing to confirm. On February 9, 1933, the day following the rejection and after the Governor had been notified by the Clerk of the Senate of the rejection by the Senate on the 8th, the Governor transmitted a message in writing to the Senate reappointing the Hon. Frank L. Denison to be a member of the State Highway Commission and reappointed him as the chairman thereof.

Upon the reception of the second message reappointing Mr. Denison and before it was referred to the Committee on Governor's Nominations, the point of order above set out in full was urged by the Senator from Coleman (Woodward). The facts stated are undisputed.

In support of the point of order, under the undisputed facts aforesaid, the following constitutional provisions and rules of the Senate must be clearly understood:

Section 1 of Article 2, Texas Constitution, provides:

"Section 1. Departments of Government to be Kept Distinct.—The powers of the government of the

State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to-wit: Those which are *legislative* to one, those which are *executive* to another, and those which are judicial to another; and no person, or collection of persons, being one of these departments shall exercise any power properly attached to either of the others, except in the instances herein expressly permitted."

Section 11 of Article 3, Texas Constitution, provides:

"Rules *** Each House may determine the rules of its own proceedings ***"

In pursuance of Section 11 of Article 3 just quoted, the Senate adopted and at the time the point of order was raised, was operating under the following rule: Senate Rule 52, Texas Legislative Manual:

"After a question shall have been decided either in the affirmative or negative, any member voting with the prevailing side, may, on the same day in which the vote was taken, or within the next succeeding day of actual session, move the reconsideration thereof ***"

Under Rule 52 just quoted the Senate recognizes that unless a motion is made by a member voting with the prevailing side, to reconsider the vote within the time fixed, to-wit: the day the vote is taken or the next succeeding day of actual session, that no such motion to reconsider can thereafter be made.

Section 12 of Article 4, Texas Constitution, dealing with the power of the Governor to fill vacancies in State and district offices, reads as follows:

"Section 12. Governor to fill vacancies in State and District offices.—All vacancies in State or District offices, except members of the Legislature, shall be filled, unless otherwise provided by law, by appointment of the Governor, which appointment, if made during its session, shall be with the advice and consent of two-thirds of the Senate present. If made during the recess of the Senate, the said appointee, or some *other person* to fill such vacancy, shall be nominated to the Senate during the first ten days of its session. If rejected, said office shall immediately become vacant, and the Governor shall, without de-

lay, make *further* nominations until a confirmation takes place. But should there be no confirmation during the session of the Senate, the Governor shall not thereafter appoint any person to fill such vacancy who has been rejected by the Senate, but may appoint some other person to fill the vacancy until the next session of the Senate or until the regular election to said office, should it sooner occur. Appointments to vacancies in offices elective by the people shall only continue until the first general election thereafter."

Bearing in mind the constitutional provisions cited and Rule 52 of the Senate, I submit the following in support of the point of order.

Mr. Denison's confirmation having been rejected on the 8th day of February and no motion having been made to reconsider the vote by which he was rejected within the time permitted by Rule 52, the Governor could not by re-submitting the name of the same person, compel the Senate to again take action on the question (confirmation or rejection) which had theretofore been decided by the Senate and thus annul, set aside, repeal or hold for naught Senate Rule 52 adopted under and by virtue of the Constitution (Section 11, Article 3).

The power to nominate or appoint is a function of the Governor—the executive department of the government; the Legislative branch, the Senate, has no power to initiate or suggest the name of the appointee, nor can it nominate or appoint. The power to confirm or reject an appointment, that is to say, whether the appointee is to be confirmed or rejected, is a function of the Senate—the legislative branch,—and the executive branch, the Governor, has no power or authority in respect thereto; each branch must exercise its own power and neither can exercise any power belonging to the other.

Section 1 of Article 2, Texas Constitution, heretofore quoted, provides

"The powers of the government of the State of Texas shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to-wit: Those which are legislative to one, those which are

executive to another and those which are judicial to another. ****"

If the governor, after his appointee has been rejected, again re-submits the name of the same appointee, and if the Senate is required to consider the appointment and act thereon and either confirm or reject, then it is to say that, notwithstanding the Senate, under its Rule 52 adopted under authority of the Constitution, could not reconsider its previous action in rejecting the nomination, no motion having been made to reconsider within the time permitted by the rules, nevertheless and notwithstanding its rules forbid a reconsideration, the Governor, by re-submitting the name of the rejected appointee, could thereby compel the Senate to violate its own rule and reconsider the confirmation or rejection of the same identical appointee theretofore rejected by the Senate.

Such a construction upon the power of the Governor as provided by Section 12 of Article 4 heretofore quoted, is to say that the Governor may set aside a rule of the Senate notwithstanding it is adopted under constitutional authority. Such a construction of the constitutional power of the Governor would result in nullifying Section 11 of Article 3, which guarantees to the Senate the right to determine its rules and be the judge of its own proceedings.

To say that the Governor can by re-submitting the name of the rejected appointee and thereby compel the Senate to go into executive session from day to day, after the appointee is rejected from day to day, notwithstanding the Senate rules deny a reconsideration, is to lead to absurdity, and the courts will not give a construction to a statute or constitutional provision which leads to an absurdity. The following cases sustain the proposition:

Authorities:

City of Corpus Christi vs. Mireur, 214 S. W. 528; at page 529;

Tummier vs. Carlton, 296 S. W. 1070, at page 1074;

Ladd vs. Yett, 273 S. W. 1006 at page 1013;

Petroleum Casualty Co. vs. Williams, 15 S. W. (92d), 553, at page 555 (Com. Apps.);

State vs. Gillette's Estate, 10 S. W. (2d) 984, at page 986 (Com. Apps.);

Holdman vs. Broadway Improvement Co., 300 S. W. 15 (Com. Apps.);

Williams vs. Carroll, 182 S. W. 29, at page 32.

It is fundamental that courts will give the construction to a statute or constitutional provision as construed by the Legislature from time to time. It has been the construction of these sections of the Constitution from time immemorial, that Rule 52 applies to all questions determined by the Senate, including its action on the confirmation or rejection of the appointee of a Governor, and it has always been the rule of the Senate to treat as final the action of the Senate in rejecting an appointee when no motion to reconsider has been made during the period fixed by Rule 52. To construe the rule otherwise would lead to strife and confusion and to indeterminable consideration. It would mean that the Governor could re-submit the name of the rejected employee every day during the session and thus prevent the Senate from carrying on its orderly business in other respects and as relates to other legislative duties.

In the case of *United States vs. Smith*, 286 U. S. Rep., page 7, it is held by Mr. Justice Brandeis at page 48:

"To place upon the standing rules of the Senate a construction different from that adopted by the Senate itself when the present case was under debate is a serious and delicate exercise of judicial power. The Constitution commits to the Senate the power to make its own rules; and it is not the function of the court to say that another rule would be better. A rule designated to insure due deliberation in the performance of the vital function of advising and consenting to nominations for public office, moreover, should receive from the court the most sympathetic consideration."

The case of *United States vs. Smith*, just referred to is, when analyzed and understood, a complete vindication of the point of order under consideration. Let us examine that case:

George Otis Smith was, by President Hoover, appointed as a member and chairman of the Federal Power Commission on December 3, 1930. On December 20th the Senate of the United States confirmed the appointment and on the same day the Sen-

ate ordered that the resolution of confirmation be forwarded to the President which was forwarded on December 22nd and received by the President. On the 22nd, the day of the reception of the resolution notifying him of Smith's confirmation, the President signed and through the Department of State delivered to Smith a commission appointing him as a member of the Federal Power Commission and designated him as the chairman thereof. Smith on the same day, December 22nd, took oath of office and undertook forthwith to discharge the duties of a commissioner. On January 5, 1931, which was the next day after actual session of the Senate, after the date of confirmation, a motion to reconsider the confirmation of Smith was made and to request the President to return the resolution of confirmation. Both motions were adopted and the President notified. The President declined to return the resolution notifying him of the confirmation and informed the Senate that he had theretofore appointed Smith under the confirmation by the Senate and that Smith had qualified by taking the oath and for those reasons refused to accede to the Senate's request. Thereafter a motion was made and adopted by the Senate directing the clerk to place on the calendar the name and nomination of George Otis Smith, which was done, and the Senate reconsidered their previous action and refused to confirm Smith. Quo warranto proceedings were instituted to test Smith's rights to hold office; the fact being without dispute. Mr. Justice Brandeis in upholding the confirmation and in denying the Senate the right to reconsider, held, among other holdings, the following: That the Senate did not have the power to reconsider its vote after having confirmed Mr. Smith. Basing his holding upon the undisputed fact that the Senate, although it had a rule permitting it to reconsider within two days, had waived its right because of having notified the President in writing within the two days of its action in confirming Smith.

He further held that the Senate rule which provided that a motion to reconsider could be made within two days, was waived because the Senate had, within the time permitted to reconsider, notified the President of its action in confirm-

ing and therefore could not withdraw the resolution notifying the President of the nomination.

The foregoing opinion is directly in point in this: The Senate of Texas, after the rejection of Mr. Denison and before the two days had expired in which it could reconsider, transmitted a message to the Governor notifying her of the rejection. Therefore, the Senate could not reconsider, and it being denied the right to reconsider, most assuredly the Governor could not force upon it a reconsideration.

In the Smith case just cited the rules of the Senate of the United States are cited and the rule on reconsideration applies whether the action be one of confirming or rejecting the appointee.

Time will not permit a further discussion of the Smith case. True it is that the Smith case was one of confirmation, whereas, the Denison case is one of rejection, but the legal principle is the same, in that we are trying to determine whether or not the Governor can compel the Senate to do that which the Senate itself was prohibited from doing and whether or not the Senate had waived its right to reconsider by having notified the Governor of its action and whether or not the Senate could, after the time fixed by its rules, again reconsider an action which had become final, more than two days having elapsed since the final action and no motion having been made to reconsider.

The Senator from Gonzales (Senator Hopkins) has cited as authority the action of President Jackson in re-submitting to the Senate of the United States the names of four directors of the Bank of the United States, this occurring in 1833. The report of this case is to be found in Benton's Thirty Years View, Vol. 1, page 385. The facts in short are: President Jackson appointed four directors of the bank who served for a year and when the Senate convened, he submitted their names for confirmation; they were *rejected* by the Senate. Thereafter President Jackson reappointed and re-submitted the same four directors for confirmation. His message re-nominating the four directors and appointing them was sent by the Senate to the committee which made an adverse report and each director was rejected and failed of confirmation. The record-

ed proceeding discloses that the committee reported:

"First, the absolute right of the Senate to reject nominations. Second, * * *, and third, against the general impolicy of making re-nominations while admitting both the right and practice in extraordinary occasions. * * *"

And,

"The committee do not deny that a right of re-nomination existed but they are of opinion that in every clear and strong cases only should the Senate reverse decisions which it has deliberately formed and officially communicated to the President."

It will be noted that in the proceeding just cited, the President did in fact re-nominate after the appointees had been rejected, and it will be noted that the Senate refused to confirm the second time. It will also be noted that the committee conceded the right of the President to make the re-nomination—but why did they so concede? Read again the Smith case heretofore cited and you will find that *no rule of the Senate was then in force* dealing with the subject of reconsideration, and read the Constitution of the United States and you will find that at that time, *no limitation and no restrictions* were placed upon the President in any manner preventing him from re-submitting the names of those who had once been rejected. The case is not in point as against the point of order. On the contrary it is authority in favor of the point of order, for it is therein recognized that such practice should not be indulged.

The Constitution of the United States in dealing with the power of the President to appoint persons to office provides:

"He shall have power by and with the advice and consent of the senate to make Treaties***, and he shall nominate and by and with the advice and consent of the Senate, shall appoint***, all other officers of the United States whose appointments are not herein otherwise provided for. ***The President shall have power to fill up all vacancies that may happen during recess of the Senate."

It will be noted that the foregoing power of appointment is unlim-

ited but the appointments must be confirmed by the Senate.

Let us turn to our own Constitution in reference to the appointive power of the Governor and consider that section of the Constitution which deals with the subject (Section 12, Article 4). We will unquestionably reach the conclusion that the point of order is well taken.

I have already quoted Section 12 of Article 4, but I shall again make reference thereto and to those parts which bear directly upon the point of order.

Section 12, Article 4, provides that if the appointment is made "during the session, it shall be with the advice and consent of two-thirds of the Senate present. If made during the recess of the Senate, *said appointee or some other person*, shall be nominated to the Senate during the first ten days of its session."

Said section further provides:

"If rejected, said office shall immediately become vacant, and the Governor shall, without delay, make further nominations until a confirmation takes place. But should there be no confirmation during the session of the Senate, the Governor shall not thereafter appoint any person to fill such vacancy who has been rejected by the Senate, but may appoint some other person to fill the vacancy.***"

Note the difference between our State Constitution and the Federal Constitution in that a limitation of power exists as relates to the Governor; whereas, no such limitation was provided in the case of President Jackson when he reappointed the four rejected bank directors.

I contend that the Constitution prohibits the Governor from reappointing the same person once rejected, whether it be a recess or session appointment and that the last part of Section 12 is applicable in both instances.

Those who take the opposite view contend that the latter part of Section 12, reading "if rejected the Governor shall make further nominations" applies only to recess appointments. I deny this construction. It is significant to note that under Section 12 of Article 4 the Governor is permitted in vacation to fill the vacancy and the person nominated (appointed in vacation) *may be re-nominated to the Senate at its next*

session; whereas, if the appointment is made during the session and the appointee is rejected, and if the Constitution is silent as to whether he may reappoint the rejected appointee—why the silence as to the right of the Governor to reappoint the session appointee? The answer is simple. The express authority given to nominate (appoint) the *recess* appointee, or any other person, if the *recess* appointee is rejected, excludes any idea that the same person may be reappointed if the session appointee is rejected. In the one instance (*recess* appointment) express authority is given to nominate the same person to the Senate when it convenes; whereas, in the case of a session appointee, no mention is made of the right to reappoint "the same person" if rejected. Unquestionably the action of the Senate is final as to the session appointee and the recess appointee if he be rejected, unless, of course, it be reconsidered within the times prescribed by the rules. But—is the Constitution silent as to what the Governor may do if the session appointee is rejected and by express terms provide what he may do as to recess appointees? No, it is not silent. Most assuredly the last part of Section 12 applies whether the rejected appointee be a recess or session appointee. That provision of the Constitution dealing with this subject reads:

"If rejected, said office shall immediately become vacant, and the Governor shall, without delay, make *further* nominations until a confirmation takes place. But should there be no confirmation during the session of the Senate, the Governor shall not thereafter appoint any person to fill such vacancy who has been rejected by the Senate. ***"

The part of the section quoted simply means that if there be no confirmation (of the person or persons appointed, whether recess or session appointments) the Governor cannot, after the session ends, "cram down the throats of the people" the rejected appointee. If the Governor cannot do it by the means mentioned, then she cannot do it by coercion or intimidation or by repeated efforts in re-submitting the name of the rejected appointee during the session with the hopes of finding someone asleep or absent from the Senate who has voted against confirmation.

It is a fundamental rule of construction that where express authority is granted by one provision of an act and another provision on the same subject is silent as to the authority, the silent provision will be construed as denying authority as expressly authorized by the other section.

The Texas Constitution, Section 12 of Article 4, expressly authorizes the Governor, when he makes a recess appointment, to re-submit the same person to the Senate for confirmation at its next session, thus granting express authority; whereas, as to session appointees the Constitution is silent and does not give him such authority. Therefore, Mr. Denison having been appointed during a session of the Senate and having been rejected, the authority of the Governor to reappoint him will not be extended as in the case of a recess appointment. The following authorities I deem to be pertinent and in support of this proposition:

Authorities:

State vs. Gillette's Estate, 10 S. W. (2d) 984 at page 986;

Smith vs. Grayson Co., 44 S. W. 921, at page 923;

Long vs. State, 1 Tex. Crim. Rep. 709, at page 713;

Ex parte Cooks, 135 S. W. 139;

Page vs. Allen, 98 Amer. Dec. 272, at page 274.

I submit the foregoing as a satisfactory reply to the argument of Senator Hopkins that the Constitution does not deny the right of the Governor to reappoint Mr. Denison. I contend, however, that by the express terms of Section 12, Art. 4, he is denied that power and which point I have heretofore discussed—even though the Constitution (Sec. 12 of Art. 4) is silent as to his right which I do not admit them the cases cited refute the argument of the Senator from Gonzales.

In support of the proposition that the Constitution should not be construed in such a way as to enable the Governor to continue sending to the Senate the name of the same person already rejected and thereby force the Senate to disregard its rule of procedure and to compel it to reconsider that which it has already considered and become final, it is significant to note the following language of Mr. Justice Brandeis in

the case of United States vs. Smith, to which reference has heretofore been made. Mr. Justice Brandeis said:

"The Senate has offered no adequate explanation of the meaning of an order of immediate notification, if it has not the meaning which Smith contends should be attached to it. Its counsel argues that the practice of ordering such notification developed at a time when the Senate passed upon nominations in closed session; and that the order may have been simply a means of furnishing the President with information, not available through public channels, concerning the probable attitude of the chamber prior to final action. It is suggested that the President might thereby be enabled to muster support for a nominee *at first rejected*, or to withdraw the nomination before final rejection. But the explanation has no application to a notification of a favorable vote. *Nor is it credible that the Senate by unanimous vote would adopt a procedure designated merely to permit the exertion of influence upon a majority of change a decision already made.* The construction urged is a labored one."

It is significant that Mr. Justice Brandeis said it was not credible that the Senate would adopt a procedure the operation of which would give the President an opportunity to exert influence upon the rejecting majority in order to induce them to change their decision. The reasoning is pertinent to the Constitution of Texas now being considered. We should not impute to the framers of our Constitution the intention to provide a method whereby the Governor in power is given the right to coerce the Senate to change a decision already made, a decision which the Senate alone has the right to make, nor should we so construe the Constitution as that the Governor as the executive department, could interfere with the orderly proceeding of the legislative body, the Senate, and thus treat as a mere "scrap of paper" its solemn rule (52).

If the Governor under Section 12 of Article 4, can force the Senate to reconsider that which it has already acted upon and which has become final by the Senate Rules, it is to say that he may thereby nullify the authority given to the Senate in Section 11 of Article 3 which authorizes

the Senate to determine its rules of proceedings. The courts will harmonize conflicting statutes or constitutional provisions if possible and in such a way as will uphold both rather than to nullify or strike down either. In this instance the courts will not permit a construction to be placed upon Section 12 of Article 4 as would permit the Governor, by re-submitting the name of Mr. Denison, to strike down and nullify the rules of the Senate adopted in pursuance of Section 11 of Article 3 of the Constitution.

Authorities.

Jones vs. Williams, 45 S. W. (2d) 130 at page 137 (Sup. Ct.);

Ex parte Hart, 56 S. W. 341, at page 342;

Lastro vs. State, 3 Crim. Apps. 363, at page 373;

Fleming Road Building Co. vs. Chastain, 241 S. W. 619, at page 624;

Brown vs. Fidelity Investment Co. 280 S. W. 567, at page 568 (Com. Apps.);

Eucaline Medicine Co. vs. Standard Investment Co., 25 S. W. (2d) 259, at page 262.

What do the words "further nominations" means as used in the foregoing section? Remember the Constitution provides for "*further nominations*" when the appointee is rejected.

Authorities.

"Further" means "in addition," "additional."

Words and Phrases, 3rd Series;

McKie vs. Collison, 127 NE 92;

Shaw vs. Southland Insurance Co. 185 S. W. 915;

Goplin vs. City of Chicago, 269 Ill. 27;

"Further" means "to amplify," "add to."

Blair vs. Scribner, 60 Atl. 211.

"Further" means "other," "additional."

Chrisman vs. Loterman, 149 Cal. 647.

See also Vol. 4, Words and Phrases, 1st Ed., under the word "further."

It has been urged that under previous Constitutions the Governor is expressly prohibited from again appointing the rejected appointee

and that the present Constitution, Section 12, Article 3, does not expressly deny him that right and therefore, in view of previous Constitutions denying him the right to reappoint we should not construe the present Constitution as denying the Governor the right to re-nominate. The present Constitution does deny him that right.

Previous Constitutions, without now reading them, each and all, expressly deny the right of the Governor to re-nominate or reappoint the same individual to the same office once he has been rejected. Each and every one of the sections of the Constitutions cited, to-wit: The Republic of Texas, the Constitution of '45, the Constitution of '61, the Constitution of '66 and the Constitution of '69, deal specifically with *recess appointments*. I repeat that each of the sections cited deal only with recess appointments. Can it be said that these sections are authority when we are dealing with a session appointment? Can it be said that there is any difference in the old Constitutions and the present Constitution, even as applies to recess appointments? Certainly not. The present Constitution expressly provides:

"If made during the recess of the Senate, the said appointee, or some other person to fill such vacancy, shall be nominated to the Senate during the first ten days of its session. *If rejected said office shall immediately become vacant*, and the Governor shall, without delay make *further* nominations, until a confirmation takes place. But should there be no confirmation during the session of the Senate, the Governor shall not thereafter appoint any person to fill such vacancy who has been rejected by the Senate."

Can any reasonable mind conclude that under our present Constitution, if a recess appointee is rejected, the Governor could reappoint the rejected appointee? Most assuredly not. Neither could it be done under the previous Constitutions mentioned; therefore the old and the present Constitution are identical in respect to this question.

The authorities I have cited defining the word "further" makes clear that the framers of the Constitution meant other nominations, additional nominations, and did not

intend it to include the same person rejected. I might further add that the old Constitutions in dealing with the power of the Governor to appoint persons to office in term time or during a session of the Senate, does not restrict or limit his power as does the present Constitution.

Other instances cited by those who oppose this point of order where late Presidents have re-submitted the name of rejected appointees, have no bearing on this question. The Constitution of the United States as heretofore pointed out, throws no restrictions around them. It is elementary that under the Federal Constitution the President is without limit as to his power and authority unless expressly prohibited, whereas under our State Constitution, which is one of limited power, the Governor can do only that which the Constitution permits and he is denied the right to do that which the Constitution prohibits. There is a vast difference between the power granted under the Federal Constitution and the power granted under the State Constitutions.

AUTHORITIES:

Longmire vs. State, 171 S. W. 1165, at page 1168, quoting from Cooley's Constitutional Law.

Ex parte Hart 56 S. W. 341, at page 343; 9 Texas Jurisprudence 422, Sec. 11 and page 444, Sec. 30.

SUPPLEMENT—(Continued).

Monday, February 20, 1933.

(The Committee being called to order by the Chair, the following proceedings were had, to-wit:)

Senator Woodward: I believe when we recessed Friday—Saturday—it was with the understanding that certain exhibits were to be read into the record. As I understand it, those exhibits were the depository agreements between the Security Trust Company and the several counties, and the escrow agreements between the counties and the Highway Commission in reference to the securities which were to secure the Highway Commission toward the payment of the indebtedness of the counties to the Highway Commis-

sion, and I am assuming those matters will be furnished by the proper parties and read into the record. I desire to make this statement at this time—

The Chair: (Interrupting) Are those contracts here?

Senator Woodward: I understand they probably have been submitted. I don't know, but I assume they will be furnished, that they are available from some source, and with that statement I desire to say, Mr. Chairman, speaking only for myself, as one of the Board of Managers, that I do not see any use of consuming further time in the presentation of any evidence that tends to disprove that which has not already been proven. In other words, I see no reason for this Committee taking further time to negative assertions which have not been proven, and with that statement I do not care to call any further witnesses.

Senator Martin: I was trying to look over this while the Senator was speaking. I did not mean to be disrespectful. I heard him asking about some exhibits and I was trying to see if I had the very things he was asking about. The last part of the statement I did not understand with reference to—

Senator Woodward: (Interrupting) My statement was this. I mentioned as we closed Saturday I understood that certain exhibits were called for which I presume are here or will be furnished to be read into the record and that I did not see,—and speaking for myself only as one of the Board of Managers,—I did not see any use of consuming further time with this investigation in an attempt or in a further effort to disprove something that has not already been established, and that I did not have any other witnesses to call.

Senator Martin: Well, I don't really understand the Senator's suggestion here. As he well knows, I, as one of the members of the Board of Examiners, as well as a member of the Senate, was bitterly opposed to going into this at all in this end of the House, but the door has been opened up and the matter has been started and I see no reason why we should stop at this particular time and call the investigation off. As he remembers there was a resolution offered here as to a certain investiga-

tion which was amended by the Senator from Brenham to the effect that all other matters might be gone into that we saw fit to go into, and, individually, since we have gone into this matter I think we ought to go completely through it so everybody will know how it happened and what it is all about.

Senator Woodward: I am not objecting to you going into anything you want to. I am announcing, and speaking only for myself that I don't see any use,—and I am speaking for myself,—of consuming the further time of the Senate in disproving something that has not been proven. Now, if you want to go into other matters—

Senator Martin: I don't understand the statement "disproving something that has not been proven." I don't see how that can be, what you have reference to.

Senator Woodward: What I mean is this. The Governor has filed her message up here in which she made complaints of certain matters. Those things have not been established. The testimony so far, as I understand it, disproves those charges, and I see no use of keeping piling upon and piling upon evidence that just tends to refute those charges. If you have anything to sustain the charges I am not objecting to you going into it. I am not trying to control you. I am merely announcing my status.

Senator Martin: The way I look at it the charges prove themselves.

Senator Woodward: If you are satisfied with your evidence that is all right with me.

Senator Martin: When the Governor sent the message here she was called upon for her Bill of Particulars which was laid before us. There has not been a thing on earth, as I understand, that she set out and gave in that Bill of Particulars that has been denied. The Highway Commission admits they did it but undertakes to vindicate themselves upon certain grounds and particularly that that is the only way they could do it and continue to build roads in this State. Now, whether there has anything been established, or proven,—to my mind, counsel states that as a fact, and it looks to me like it might be left to his opinion—

Senator Woodward: (Interrupting) I said I was only speaking for myself.

Senator Martin: I am glad you made that statement. You said nothing had been established and nothing been proven. We have just got these exhibits brought over, handed to me since I came in here about ten minutes ago. I feel like we ought to have some time to go through them to see exactly what they contain, what the agreements are, as set out in them, between the Highway Department and the various counties involved in this matter. We might undertake to get by by using the auditor who went over the books and made the report. Is Mr. W. Frank Carter in the room? We want to ask Mr. Carter to be sworn.

(Thereupon, the Chair swore Mr. W. Frank Carter.)

Senator Sanderford: Mr. Chairman and gentlemen of the Committee, I want to send up a letter and ask the Secretary to please read it in view of the fact my counsel was denied the privilege of asking questions.

(Thereupon, the Secretary of the Senate read the letter referred to.)

The Chair: What is the pleasure of the Committee?

Senator Sanderford: I move that the letter be placed in the record.

Senator Woodward: I move that it be stricken from the record for the reason it is unsworn, ex parte statement of a man who discloses no facts but merely expresses his own personal opinion and conclusion in an indictment against the Highway Department.

Senator Woodruff: I want to second that motion and say that I think it ought to be excluded from the record as being a reflection upon the integrity, the honesty, the ability of this Senate and its members to place fairly and squarely in the record all matters pertinent to this inquiry, and I say further that I am disposed at this instance to call that gentleman before the Senate and reprimand him as being in contempt of the Senate in raising inferences and making the implication in this communication that anybody in the Senate, or out of it, is disposed to whitewash the facts involved in this inquiry. I move the communication be stricken from the record.

The Chair: Do you make that as a motion?

Senator Woodruff: I am merely seconding the motion of the Senator from Coleman.

The Chair: The motion by the Senator from Bell is that the communication be printed as a part of the record in this case. The motion of the Senator from Coleman, as a substitute, is that it be stricken from the record and be not printed.

Senator Woodward: For the reasons stated.

The Chair: It is now open for discussion.

Senator Sanderford: Owing to the fact that the Senator from Coleman and the Senator from Wise at the beginning of this inquiry arose to state they have personally investigated all the records of the State Highway Department, that they had gone into all the matter thoroughly, and that as far as they could find they had come to the conclusion that there was absolutely nothing that even tended to indicate that the department was guilty of fraud, or in the matter of mismanagement or misapplication or in any of the matters charged, and they asked that those messages of theirs be put into the record, and it was agreed. Now, why do they object when the Senator from Bell asks his attorney to draft a message from his county and for him presenting the other side of the thing? Why should they object to it going into the record?

The Chair: May the Chair ask one question?

Senator Sanderford: Yes, sir.

The Chair: One county involved in this controversy is Wheeler County, in my district, and I would like to know how the gentleman comes to represent them. So far as Wheeler County is concerned I will represent it, and they do not need any further representation the way I look at it.

Senator Sanderford: I don't believe it says he represents all of them.

The Chair: It is representing Wheeler County the way I understood it. I will take care of them.

Senator Sanderford: I will be glad to have it amended to represent Bell County only.

Senator Woodward: The county judge of Concho County instructs the Secretary that the gentleman was not representing Concho County.

Senator Woodruff: It occurs to me

that some evidence of the gentleman's connection with any county ought to be filed here in this Committee, giving him specific authority to appear for any county.

The Chair: I think that has already been filed by the Senator from Bell. At my invitation that was permitted, representing Bell County, and I think that is perfectly all right.

Senator Woodruff: I mean, of course, any county other than Bell.

Senator Collie: It appears to the Senator from Eastland this is an ex parte statement by some witness and it appears to me this is improper and should be excluded for the reason it is not sworn to. If the gentlemen, this side of the Board of Managers wants this testimony in here, they know the proper way to get it before the Committee. They can take his deposition or subpoena him as a witness to testify to the things set out in that statement.

The Chair: Is there any further discussion?

Senator Sanderford: Is there any objection if we subtract the name and put the name of the Senator from Bell?

Senator Woodward: None whatever. Any statement you want to go in this record I have no objection, and when you ask why do we object to him making a statement when we made a statement,—it is for the reason we constitute the Senate of this State and we have a right to make a statement on the floor of the Senate, and we have a right to have our statements read into the record, but outsiders, who are filing an exparte, unsworn conclusion here, we are not willing to put that on record. Any statement you want to make and put into that record, I have no objection to it at all. You have a right to make any statement you want to. You can put your name in his place if you want to.

Senator Sanderford: I want the Senator from Coleman to understand I am not an attorney, and my county and my people are involved to the extent of over seventy thousand dollars and I asked for an attorney to come in and represent my people and me as an attorney, and you all have excluded him from asking questions, and that is the reason I ask

that he present this letter of explanation.

Senator Woodward: I have made myself clear. I have no objection, as a member of the Senate, to you signing that communication yourself, or any other communication you want to read into the record, but I do not believe I would include that statement that is a reflection on your colleagues.

Senator Sanderford: I don't think there is any reflection in there.

Senator Woodward: If you are going to sign that letter my friendly suggestion is that you strike from that letter those things that reflect upon the integrity of your colleagues. I don't think you want to do that.

Senator Sanderford: I don't think there is anything in there that does that.

Senator Redditt: I don't want to take up too much time, but in view of the statement made by Senator Woodward, and others, that the original motion and the substitute both be withdrawn, and the Senator from Bell be permitted to put in the statement whatever he sees fit.

Senator Woodward: I don't want my motion withdrawn to strike the statement as made by the outsider, from the record.

Senator Redditt: The statement may be withdrawn as suggested, and the Senator from Bell can put in what he wants to.

Senator Woodward: I want this to be a privileged matter. I don't want the members of this State indicted by carrying a communication by a man who had no right. He has no right to send up that indictment and then withdraw it. I want the members to understand the motion I am making is a privileged motion. They have no right to publish this ex parte unsworn statement without suffering the consequences.

Senator Sanderford: And what do you want stricken out?

Senator Woodward: The whole thing, because it is an insinuation that we are trying to whitewash somebody and I say it is an infamous lie and I stand on my feet to back it up.

Senator Collie: Isn't it also against those on this side of the table?

Senator Woodward: I speak for myself.

The Chair: I think Senator Red-

ditt has offered the proper solution of the matter.

Mr. Hair: Mr. Chairman, will you permit me to say something?

The Chair: Proceed, Mr. Hair.

Mr. Hair: I have passed the age of fifty-five years; I have been practicing law for over thirty years. I have never been a member of this Honorable Senate, but, Sirs, this Senate as a Committee of the Whole, invited me to participate in this trial. If I know anything about the rules of court procedure, or investigations, and I know anything about the rules of evidence, this Senate on Saturday afternoon, after unanimously inviting me to represent Bell County, and the Senator from Bell, through one of its Senators, by his direct words and action, misconducted himself, and he is not familiar with the facts in this case. As a Senator he states that he has made an investigation, and I want to tell him that when he says that what I have stated in that statement is not so he is also stating what is a falsehood.

Senator Collie: May I make a motion, Mr. Chairman, that the Committee stand at ease for five minutes until we get straightened out here?

The Chair: The Committee will stand at ease for ten minutes.

(Whereupon the Committee took a recess for fifteen minutes.)

The Chair: The Committee will now come to order.

Senator Pace: Mr. Chairman.

The Chair: I recognize Senator Pace.

Senator Pace: Mr. Chairman and members of the Committee, I think the members of the Senate of the State of Texas are well qualified to conduct this investigation. I don't know that it is necessary for the members of the Highway Commission, personally or otherwise, to have a group of attorneys here, as well as well-wishers and others, and other attorneys, or otherwise. I believe that the members of the State Senate can conduct this examination in a dignified manner. I made a motion here the other day that certain gentlemen be allowed the privileges of the floor, those gentlemen being the personal representatives of Mr. Cone Johnson, a member of the Highway Commission. I believe that probably, in the light of the things that have developed, that maybe that was a mistake. I think the things that have occurred possibly might be

the forerunner of other things that might occur, and I therefore, want to make a motion that we amend our rules of procedure and exclude the attorneys for the members of the Highway Department, and that we exclude any and all outside individuals, under our rules that we have adopted, save and except members of the House and members of the Senate, under our Rule 92; and that we conduct this examination in a manner becoming the Senate of the State of Texas, and I would, of course, except the Attorney General from that rule. I think the Attorney General should be here.

Senator Neal: Mr. Chairman, may I be recognized?

The Chair: Senator Neal.

Senator Neal: I would like to suggest that the Attorney General's Department has been invited and should be permitted to stay in. Do I understand the motion includes them?

Senator Pace: Yes.

The Chair: What about the Banking Commissioner, State Comptroller, and other State departments?

Senator Pace: As to this suggested amendment, I meant the State departments and it does not exclude them.

The Chair: The motion is that all attorneys be excluded, and that the Attorney General's Department be represented here, and that the Senate conduct the investigation. That covers your motion, doesn't it, Senator Pace?

Senator Pace: Yes.

The Chair: Is there any discussion on that motion?

Senator Martin: Individually, so far as I am concerned, it makes no difference with me one way or the other. I could sit here and propound questions for weeks, and have no trouble with anyone, because if I should make a blunder of any kind, if it is called to my attention I would be glad to apologize for it in a moment; but since we have started with this in this way, part of the hearing has gone on up to this time with certain parties in here, I just want to call the Senate's attention to the fact where we will be. It is like permitting a lawyer to sit in a court room during half of a trial, and when the trial is half over, to exclude him from the room during the remainder. Of course, individu-

ally, it don't make any difference to me.

The Chair: Is there any further discussion?

Senator Stone: Would the effect of the motion be to exclude the attorneys for the Highway Department, and the attorneys for Mr. Johnson and all of them?

The Chair: Yes.

Senator Sanderford: In view of the fact we are investigating the Highway Department I think they are entitled to have their attorneys here, and as it was I who asked for counsel in behalf of my people, and for my county, if you want to exclude all others I will vote with you on it. And because I have been in this little skirmish I gladly accept all of the blame and offer all of the apologies it takes to make conditions right. But in the defense of the State Highway Department, I think they are entitled to have all of their attorneys. If you want to eliminate all other outsiders I will vote with you, and I will try to represent my people and the affairs of my county in a manner so that they will feel like they have had fair representation.

The Chair: I am sure that the Senate appreciates the magnanimous statement of the Senator from Bell and the splendid spirit in which it is made.

Senator Collie: I can heartily agree with the Senators who have just spoken, but it seems to me like inasmuch as we are investigating the Highway Department they ought to have a right to sit in here.

The Chair: It does not exclude the members.

Senator Moore: What about the representatives of Commissioner Johnson?

The Chair: Senator Pace's motion included them and he asked the motion to be amended.

The Chair: You have heard the motion. All in favor of it let it be known by saying aye, opposed the same sign.

The Chair: Gentlemen, you all voted mighty weak on that thing. I am going to ask you to vote again.

Senator Purl: I would like to have the motion put again.

The Chair: The motion was that all attorneys be excluded during this hearing and that no one participate in conducting the hearing, except the Attorney General's Department and

the members of the Senate, and I put the motion twice and I think it carried. If they want an Aye and No vote I will call the roll.

Senator Woodruff: Mr. Chairman, it being a motion to change the rules does it take a two-thirds vote?

The Chair: It is not changing the rules.

Senator Sanderford: Is a substitute motion in order?

The Chair: I put the motion and it carried and it is too late. You can move to reconsider the vote if you wish.

Senator Collie: What about the Attorney General. Isn't it his duty under the statute to represent the Highway Department?

The Chair: I think he is representing the State of Texas.

Senator Sanderford: It is their duty to represent the departments.

The Chair: He represents the Department and I think he also has a bigger duty than that, he is representing the people of the State of Texas.

Senator Collie: I think the Highway Department is entitled to representation here.

The Chair: The members may be present, and I think the Senators will ask any question the members of the Highway Commission might desire, and I think we will get along that way.

Senator Stone: I would like to move to reconsider with the idea of amending that rule, permitting the Highway Department to keep their counsel on the floor and any examination to be conducted by the Senate.

Senator Pace: The Senator did not vote right.

Senator Parr: I move to reconsider the vote for this reason. I don't agree with Senator Pace. I think the Highway Department should be recognized here and I think the county judges of this State should be allowed counsel here to sit at that table and propound questions to any county judge that is put on this witness stand. I regret what happened here a while ago as much as any Senator in this Chamber, or anybody else, and I hope it will not occur again. Now, I want to see that the light is turned on this proposition and go to the bottom of it and see who is in the wrong, and if there is any wrong, punish the wrongdoers;

if there is no wrong I want to see everybody cleared from any implication anywhere. I hope the light will be turned on this proposition.

The Chair: Motion has been made for reconsideration of the motion of the Senator from Smith, and was adopted. Is there any further discussion?

Senator Woodruff: Yes, sir, on motion to reconsider. In the first place—the Senator from Duval—no county here, in connection with any of the county officials in any of the list of twenty-two counties whose affairs bear on this proposition, are under inquiry or are in question.

Senator Sanderford: Will the Senator yield?

Senator Woodruff: I will.

Senator Sanderford: According to the testimony it tends to show that liability of loss will be on the county, and as my county is one of those counties, I felt like and feel like the liability of loss should not be on the county, therefore I asked for the privilege of counsel, and I think they should have representation, in view of the fact that they do stand a chance of having a total liability for loss placed upon them.

Senator Woodruff: Now, Mr. Chairman, there are twenty-two counties. The county judge and four commissioners, each of whose official acts themselves would be subject to review, and each of whom, under the theory of the Senator from Duval, would be entitled to personal representation on the floor of the Senate. I can see no good purpose to be served by their being here. The Senator from Bell, the Senator from Wise, the Senator from Duval, are amply able to take care of the situation with respect to these counties. What we are interested in here and the important thing involved in this hearing is to find out whether or not certain acts—official acts—of the Highway Commission of the State were unlawfully done. If not unlawfully done, whether they were unwisely and unjustifiably done under the circumstances; that the sole purpose of the inquiry, as I understand to be the purpose — —

Senator Parr: Do you yield?

Senator Woodruff: Yes, sir.

Senator Parr: That is very true, but you want to get these county judges on the witness stand and prove by them that the actions that

have been performed by the Highway Commission, if they are legal and everything and will stand the turning on of the light as to everything they have done, then, gentlemen, I am with you, I want to see it done. I don't want the blame laid on the Highway Department any more than you do, and I don't want the blame laid on the county judges any more than you do, but I want to see the light put on these transactions and see what they are, and if there isn't anything, well and good, and if there is something we will see what it is.

Senator Woodruff: That is quite good, Senator Parr, and I quite agree in your statement, and the investigation should have ample light as to whether the commissioners court or the Highway Department is in any way responsible officially or otherwise and see if any one of the people are culpable for any action.

Senator Cousins: Senator, I feel that in the interest of justice to all alike they should be allowed to select one of their number, of the county judges or lawyers to represent them, to come down here and ask to be recognized, then we might take that under proper consideration. That is just my opinion of it. If they want to come, let them come.

Senator Woodruff: If the group of counties affected come here and have a spokesman and ask for the privilege of sitting in this hearing, I think it is entirely proper for them to do so. But the point I am making is that you are inquiring into the actions and conduct of the Highway Commission, and if I am any judge of the testimony that has been introduced so far in the hearing, there has been no culpability alleged against any member of the Highway Commission or any member of a county court, that each of them and all of them acted as wisely as they could under the circumstances.

Senator Hornsby: Point of order.

The Chair: State your point of order.

Senator Hornsby: My point of order is it is not proper to be discussing as to whether the county judges acted wisely or not.

Senator Redditt: Let me make a motion: That we take a recess until 2:00 o'clock tomorrow for the purpose of enabling us to determine some rules of procedure or rules of

evidence in the conduct of this hearing.

Senator Woodruff: Yes, sir. I yield to the substitute, speak for the substitute and the motion to reconsider, it occurs to me better to vote down both motions and settle down here and resume the work where the Committee left off a few minutes ago.

The Chair: All right. Mr. Secretary, I believe I will let you call the roll.

(The Secretary called the roll, and announced the vote as being eight "ayes" and nineteen "noes".)

The Chair: There being eight "ayes" and nineteen "noes", the motion to reconsider is lost. Now, I take it that settles that controversy. The witness has been sworn and is now on the stand. I want to state that possibly this was precipitated by a ruling which I made the other day. That ruling was made simply because the Chair felt that the testimony being elicited was a repetition for about the fourth time. I also want to turn on all the lights, and I adopt everything that Senator Parr has said. And I will do my best to maintain order here, and I think you gentlemen out there in the Senate can bring out everything that should be brought out on both sides of this question, to the best interest of each side of the parties. And I will try to do my part here. Now, let's have order and proceed with the hearing of this witness.

Senator Martin: Mr. Chairman, is it all right for me to proceed to question the witness?

The Chair: Yes, sir.

Senator Martin: I would like to have the privilege of having Mr. Lynn sit near me here.

Questions by Senator Martin.

Q. Mr. Carter, what are your initials?

A. William Frank Carter.

Q. What is your business?

A. At the present time, I am Assistant State Auditor.

Q. Are you a certified public accountant?

A. Yes, sir.

Q. How long have you been such?

A. I received my certificate in 1926.

Q. You say you are at this time only an Assistant State Auditor?

A. Yes, sir.

Q. As Assistant State Auditor, what are the facts as to whether or not you have had occasion to examine the books of the Highway Department?

A. We examined them for a certain period.

Q. When did your examination begin?

A. It began some time in the month of either May or June, 1931.

Q. '31?

A. Yes, sir.

Q. Did you remain on that particular job, on continuously until when?

A. I wouldn't say exactly continuously, because there was a period of time that I was off on other jobs; but I had some men working on the job under me from then up until some time in December.

Q. December, 1932?

A. Yes, sir.

Q. Then, from May, 1931, until December, 1932, you or somebody under you were continuously working on the books of the Highway Department?

A. Yes, sir.

Q. Now, you said you had examined the books of that Department for a certain period of time. What period of time?

A. The period covered here is from September 1, 1929, to August 31, 1931. However, in some cases we were enabled to make it closer to this date than that.

Q. I hold in my hand here Volume 10 of the Second Biennial Report of 1932, audit of the State Highway Department, General Comments and Recommendations. Is that or not your report on the Highway Department or any part of your report?

A. That is a part of the report of the State Auditor's office here. This is made by Mr. Moore.

Q. A part of the report? What other part is there likely to be to it?

A. There were two volumes. Volume 11 and Volume 12 were in connection with purchasing for the Highway Department, and Volume 14 is the list of financial statements and procedure of the Accounting Division.

Q. 11 and 12 involved what?

A. Purchasing.

Q. And part 14 involved what?

A. The financial system, comments on the accounting.

Q. What part of it involved purchases?

A. That was on certain requisitions issued for purchases made by the Highway Department.

Q. All for equipment, and so forth?

A. The furnishing of parts, for repairs, for equipment,—we also covered a few items of equipment, but that report was principally for parts and repairs.

Q. Principally what?

A. Repair parts, purchases, and repair work done.

Q. And Book 14 covers what?

A. Book 14 is the financial division or details of financial transactions and comments on the accounting division and comments on financial statements.

Q. I find here on page—near the bottom of the page this language: "The situation has been mismanaged so completely and the interests of the State of Texas and Henderson County in this case have been neglected so flagrantly, that it is recommended that all of the circumstances relating to the deposit of State and County funds in this bank and the later liquidation of the bank be investigated thoroughly by a committee of the Legislature in order to place the responsibility for the loss that has apparently been suffered by the State and by the County, and for the entire situation as it now exists;" did you, or not, as and auditor for your Department make that recommendation?

A. That recommendation was made by the office; it was written by Mr. Lynn and myself in conjunction.

Q. Mr. Lynn was relying upon what you found with reference to that fund there, was he?

A. Yes sir, that covers or applies particularly to the situation in the Athens National Bank at Athens, Texas.

Q. All right, will you just outline in your own way what you mean by relating to the deposit of State and county funds; how could the State be involved in that?

A. There were balances placed in that bank in escrow to pay for highway construction, and in addition to that, there were tax collections

placed in that bank which were due the Comptroller of the State of Texas.

Q. Did you or not, or can you now give us offhand how much the State had in the bank at that time?

A. The figures of the balances of the State Highway Department are shown in this report on page 6; there was due the State Highway Department, or rather placed in escrow for the benefit of State Highway Department \$85,846.27; in addition there were amounts due the Comptroller which I haven't the exact figures on, but which were approximately \$50,000.00.

Q. Do you know how long that has been due to the Highway Department?

A. Those moneys were placed in that bank at various times and as the construction has proceeded certain amounts have been transferred to the escrow accounts, and certain withdrawals have been taken from it. I could refer to my working papers and give you the dates of the deposits, but I don't have that in mind; they covered over a period of several years.

Q. Could you give us the dates of the checks given on that particular deposit?

A. That involves several deposits. Just which checks are you referring to now?

A. That escrow account that was in the Henderson bank; can you give us the date when the checks were dated and about when they were presented?

A. There was only one check which has been issued and not cashed that is mentioned in here, dated January 15, 1931, for \$60,669.56.

Q. Is that the date it was to be paid?

A. Yes, sir.

Q. Do you know whether that was a post-dated check?

A. The information we were given was that it was a post-dated check; now the county clerk's check stub book showed the check to have been issued in November, 1930, but dated for payment in January, 1931.

Q. Did you talk with the county clerk anything about it?

A. Not to the county clerk.

Q. To the county auditor?

A. No sir; I talked to the county clerk's deputies, you might say.

Q. Were you or not informed that that check had been written in November, 1931.

A. Yes, sir, all of the checks—there were several of them along in the stub book at that point, and we were told that they were all issued at that time.

Q. How were—

A. There were several checks at that same time, and we were told that they were all issued at the same date.

Q. Is that or not the list of checks given on page 77 in this book?

A. Yes, sir.

Q. How much is the total amount of those checks?

A. They are not added up in here; I can take the time to add them if you wish me to add them.

Q. I thought maybe you already had them added.

A. No sir; I didn't add them, but they are about \$160,000.00.

Q. My understanding is those checks were all given in November and they were due or to be presented, December 1st, 1930, three of them, January 1st, 1931, three of them; January 15, 1931, January 15, 1931, January 15, 1931, is that right?

A. There were four checks January 15, 1931.

Q. And all of those checks have been paid except one?

A. Yes, sir.

Q. That's the \$60,669.56 check?

A. Yes, Sir.

Q. Now, at the time you were there, what are the facts with reference to whether or not that bank was in process of liquidation?

A. It was in the process of liquidation.

Q. How long had it been in such process of liquidation?

A. Something less than a year at the time I was over there; I think that I was there in March or April, 1931, and the bank went in liquidation in April, 1930.

Q. A little bit better than a year or about a year?

A. Yes, sir.

Q. Did you investigate to see whether or not the Highway Department had filed any statement of that account?

A. Statement in what way?

Q. With the liquidating agent;

had they filed any affidavit of any claim with the liquidating agent?

A. I couldn't get any information from the liquidating agent as to any claim having been filed, and as far as I could find out there was no claim filed with the liquidating agent.

Q. Did you ask the Highway Department if they had filed any claim?

A. No sir; I asked them about whether they had deposited the check and they informed me they had not.

Q. You asked them if they had deposited the check?

A. Yes, sir.

Q. Deposited it where?

A. With the State Treasurer for collection.

Q. Is that the legal course or channels through which the checks must go?

A. Yes, sir.

Q. Where did you find that law?

A. It is in there.

Q. You don't cite it here in your book.

A. We don't cite the specific article that provides for the depositing of checks, but we do cite it in the beginning of this report. The law which is applicable to all the departments.

Q. That's the reason I asked the question; I thought maybe you had given a summary of that particular article of the statutes. You, as one of the State Auditors, would say when January 15th came, even though that were a post-dated check, that that check should have been turned in to the State Treasurer.

Q. And if it had been turned in to the State Treasurer on January 15th, and this bank closing on March 8th, would it in due course and have been cleared through and the State have gotten its money?

A. It would have had time to have been cleared through; I couldn't say whether the State would have gotten its money or not.

Q. Going on the assumption that the bank had the money it would have been cleared through in time for the State to have gotten its money, would it not?

A. Yes sir, in the ordinary course of business, it had time to clear.

Q. I want to ask you if you had occasion to investigate the various accounts that are mentioned in the Governor's bill of particulars, particularly of Bowie County, Colorado

County, Concho County and the other counties mentioned there, did you have occasion to go into those particular accounts as auditor?

A. I am not familiar generally with the Bill of Particulars, but we did, at the Governor's request, make a list of projects on which certain checks were being held on the Security National Bank of Austin; are they the ones you refer to?

Q. Those are the ones I am referring to; they are being held by whom?

A. By officials of the State Highway Department or employees of the State Highway Department.

Q. Well, I would like to know as to what particular persons in whose hands you found those checks?

A. Mr. R. J. Hanks, superintendent of the aid projects.

Q. What records of them did they have in the Highway Department that you found?

A. Mr. Hanks had the checks in a file in his desk and one of the other employees, I believe it was Mr. Kingsbury, also had a list of those checks.

Q. What did the list of the checks show?

A. I couldn't tell you exactly, but I remember that it did have the name of the county, the project number on which it applied, and the amount of the check; I am not sure whether it showed the date of the check or not.

Q. It did have those things, you say?

A. Yes, sir.

Q. Mr. Kingsbury, you think, had the record of those checks, and you think Mr. Hanks had the checks?

A. Yes, sir.

Q. Did you add them up to see how much they amounted to, that they were holding there?

A. We listed each check, and we checked Mr. Kingsbury's records, the checks which his records showed they should have, and they—we listed from the actual checks themselves which Mr. Hanks delivered to us, the date of the check, the amount of the check and so forth, and then checked that against the record which we had gotten from Mr. Kingsbury.

Q. Did it balance?

A. I think it did, yes, sir.

Q. Did the record that Mr. Kingsbury held show that even the

checks that he had formerly listed there had been paid?

A. I don't remember, sir; the way the file was kept, it wasn't like a ledger account that would show deposits and credits; it was merely a list; we didn't particularly try to see whether he had taken any checks and disposed of them before; we were only interested in the checks he had held at that time.

Q. And I am not interested in whether he had disposed of them before; what I am interested in is what the list showed as to checks that had been paid?

A. He had his files separated between paid items and unpaid items and we listed only the unpaid files.

Q. You listed only the unpaid file, and you didn't look at the paid file?

A. No, sir.

Q. And you don't know whether any of those checks that were formerly listed or had been listed on the unpaid record were found to be paid later on?

A. We didn't try to check it from that point; we were checking it only to see what they held at this particular date.

Q. I see. Now, you spoke rather indefinitely about some of those escrow accounts there. What is your opinion with reference to the State Highway Department's system of keeping a record of those escrow accounts there, did you make any comment on that?

A. We made various comments on the escrow accounts in there, Senator; I don't know just exactly which particular comment you might be interested in.

Q. Well, where does your escrow account begin in this book, that is, your comments on it?

Senator Woodward: What volume are you reading from?

A. Volume 10.

Q. Where do you find that?

A. On page 69, the comments.

Q. Now, before you go into that; did you total up the total amount that was being held there by the Highway Department in the escrow accounts?

A. In those county checks that they were holding?

Q. Yes, sir.

A. Yes, sir.

Q. How much was that total?

A. Now, this covers the checks in the Security Bank and Trust

Company in Austin, and is shown on page 6 of the memorandum which we gave to the Governor.

Q. Page six?

A. That's not in this report; that's another report that we gave to the Governor; the unpaid checks on hand were \$1,077,462.52.

Q. Now, what is the total escrow account?

A. The total escrow balances were \$2,048,655.69; that refers to the Security Bank only.

Q. I see, and that does not include the sixty thousand dollars at Athens?

A. No, sir.

Q. You found other such instances as that though over the State?

A. Just what instances do you refer to, Senator?

Q. Well, what I mean to say is were the escrow accounts deposited in the banks that had not been paying all warrants when presented?

A. Yes, sir, there were a number of them.

Q. About how many others did you find?

A. Our general verification of the escrow accounts was made as of January 31st, 1932; at that time the balances in the escrow account were \$6,212,232.65; that's shown on page 70 of Volume 10.

Q. Page 70; let me get that in mind; those figures are so big I can't carry them hardly—

A. On page 70.

Q. You found that the escrow account that was being carried in the various banks in the State was \$6,212,232.65?

A. Yes, sir.

Q. Now, did you have occasion to examine the securities for those escrow accounts?

A. Not for all of them, no, sir; we didn't examine the securities.

Q. Did you examine any of the securities held by the Security Trust Company here?

A. We didn't examine the securities themselves, but I got a certificate from the Austin National Bank as to the securities which they held.

Q. As to the amount?

A. The amount and the listing of each bond or warrant or such other time as made up that amount.

Q. Did they give you an estimated value of those securities?

A. No, sir.

Q. Have you yourself made any

investigation as to the values being so held?

A. No, sir; we made no attempt to value them.

Q. You made no attempt to value them?

A. No, sir.

Q. So you don't know then what the securities are worth as long as they are in the escrow account, is that true?

A. I do not.

Q. Now, as an auditor or as a certified public accountant, you had to study, I presume, commercial law, did you not?

A. Yes, sir.

Q. And your dealings here as State Auditor has familiarized you with the State law?

A. Yes, sir.

Q. Did you look for any article in the statutes anywhere that would give the Highway Department authority to hold these checks?

A. The general statute provides for the depositing of moneys received and the specific statute provides for the deposit of the money to be made with the Comptroller, as they are collected. I have not been able to find any statute that provides for any department to hold any moneys after they are received.

Q. Do you know of any law that would permit the Highway Department to sit and hold checks that would not permit any other institution or State department to sit and hold such checks?

A. That's a matter of legal construction that I don't think my opinion would mean anything on.

Q. You don't think with your experience as an accountant and your familiarity with the law, that that would enable you to answer it?

A. There might be a statute that the Attorney General might know about that I haven't found. The statutes are pretty wide. I have looked through them, but I don't feel competent to pass on all questions of law affecting State departments. When we are in doubt, we usually ask the Attorney General for an opinion.

Q. Did you ask the Attorney General for an opinion on that?

A. No, sir.

Q. In your mind the law was so conclusive you didn't need any construction, is that right?

A. I had nothing at the time we made this audit to bring up the ne-

cessity for a question; however, we did have a copy of the Attorney General's opinion which was read into the record here a few days ago.

Q. You said you had a copy of the opinion?

A. Yes, sir.

Q. It seems there were two opinions—did you have one or both?

A. We had only one.

Q. Which one?

A. It's quoted in this report; I can identify it for you I think. The opinion date January 27th, 1932. It's quoted on page 82 and 83 of this report.

Q. 82 and 83?

A. Yes, sir.

Q. Now, having had this opinion before you, I presume, you are familiar with it?

A. Yes, sir.

Q. Familiar with the holdings. What are the facts as to whether or not the act of the Highway Commissioners in holding the check in the Athens transaction was or was not a violation of the ruling of the Attorney General's holding?

A. That would be a matter of opinion. The Athens Bank check was prior to the date of this opinion. In fact, a year prior to this date. The Athens check was dated January, 1931, and this opinion was rendered January, 1932.

Q. A year thereafter?

A. The opinion was a year after the date of the check, yes, sir.

Q. And at that time, so far as you know, there had been no opinion rendered by the Attorney General to anyone else?

A. None that I know of.

Q. Now, Mr. Carter, if the security that is given to back up these warrants being held by the Highway Department is not sufficient to protect the State's interests in there, somebody will have to lose, won't they?

A. That will depend on what the liquidation of the bank will pay out because the value of the security is not stated.

Q. Did you learn that the Security Trust Company was in process of liquidation when you made this report?

A. No, sir, they were not in process of liquidation.

Q. Then you say you didn't have any occasion to look over the securities being held?

A. No, sir.

Q. But if the securities are worth only thirty or forty cents on the dollar, if that's all the county securities this depository has, somebody will have to lose?

A. If the securities are worth less than the deposits then they wouldn't get anything other—

Q. (Interrupting) Who would you say as a certified public accountant would have to lose that money, the county or the State Highway Department?

A. That's a matter of law, Senator, and not a matter of opinion. I don't know that my opinion would be of any value to you on that.

Q. If you were called on for a Security Trust Company liquidation audit on these funds—these outstanding claims, you would certainly say they were in favor of somebody?

A. Yes, sir.

Q. And wouldn't you say they were held in favor of the State Highway Department?

A. They are held in escrow for the benefit of the State Highway Commission and the county.

Q. Well, if the county had already delivered its warrants and the State Highway Commission holds that, you would put it on the State Highway Commission?

A. That would depend on whether or not the delivery of the warrant would constitute payment.

Q. Doesn't it provide that these payments should be made by warrant?

A. Yes, sir, but it is contemplated only when the warrant is cashed; I don't think mere delivery of a warrant will pay a debt.

Q. The money is in escrow and if they accept the warrant and then hold the warrant, wouldn't you think that would be in payment of the county's debt?

A. Senator, that would be a matter of law; not a matter that I am competent to answer.

Q. You wouldn't undertake to answer that?

A. No, sir.

Q. Did you or not observe Article 6674-G when you were auditing over there which reads like this: "Said county aid shall be paid to the State Highway Department for deposit in the State Treasury to the credit of the State Highway Fund in partial payments as the improvement progresses"?

A. Yes, sir.

Q. You observe that statute says to be deposited?

A. Yes, sir.

Q. (continuing reading) "It shall be paid by warrants issued by the County Clerk and countersigned by the County Judge and approved by the Commissioners Court upon account of the State Highway Department certified by the State Highway Engineer. Said accounts rendered by the State Highway Department shall be based on certified accounts of contractors, laborers and materialmen previously paid by the Department, copies of which accounts shall be filed in the county with the accounts rendered by the Department." That statute provides shall be paid by warrant and doesn't say anything about a check.

A. That just depends on a question of language; the term warrant and the term check are practically synonymous in certain cases.

Q. In dealing with accounts aren't they always synonymous?

A. No, sir, they are two kinds of warrants; in some cases the county clerk writes the warrant and it is passed to the county treasurer who registers and signs it and it then becomes a warrant; at other times a warrant is drawn by the county clerk and presented to the treasurer who issues his check for it.

Q. The county treasurer wouldn't have anything to do with the fund deposited in the escrow bank?

A. Yes, sir.

Q. The county treasurer would have something to do with it?

Q. Yes, sir. You couldn't get it without the signature of the county treasurer.

Q. Have you seen any of the certificates of deposit made up in the Security Trust Company Bank down here?

A. Yes, sir, I have seen them, but don't remember the wording of them exactly.

Q. You say you examined some of these deposit certificates at the time that you were making that audit with reference to the money placed in escrow?

A. You mean the escrow agreements?

Q. Yes.

A. Yes, sir.

Q. Did you find that all of those deposit slips were the same?

A. I didn't examine the wording of all those special escrow agreements.

Q. Didn't examine all of them?

A. No, sir.

Q. Take the one of Concho County which provides that the money is deposited there and that same will be held to the credit of the State Aid Project, giving the number of it, and paid out only in accordance with the terms of the resolution. Now, going back to the resolution, and it says, paid out on a warrant. Then a warrant is all that is necessary, isn't it?

A. Yes, sir.

Q. Now, in your examination of the books and records of the Highway Department with reference to the escrow account what is your opinion, as an auditor and accountant, as to whether or not that is a good business-like way of handling it, or would you say otherwise about it?

A. In what connection, Senator?

Q. Keeping track of the escrow account.

A. I think proper ledger records should have been kept of every escrow account.

Q. And you didn't so find it?

A. We found no ledger account, no, sir. We found various certificates and office memoranda of various kinds but no regular ledger accounts.

Q. Did you find any place where the Department had lost any money by reason of that?

A. I don't know whether they lost any, or not. We found one case, at least, where they had apparently overlooked and not collected.

Q. How much?

A. I have a memoranda of that if you will allow me a minute to find it.

Q. All right.

A. On page 78 we recite one case.

Q. Page 78?

A. Yes, sir.

Q. What is that?

A. Under the heading of "Failure to Collect Balances Due."

Q. Failure to collect balances due?

A. Yes, sir.

Q. How did you manage to find that?

A. We sent out verification letters to all of the county treasurers asking for records of deposits, and we also sent out letters to all of the banks in the principal centers of the counties where we thought escrow money might be on deposit and asked the banks to report any balances they might have. This balance was reported by a bank in Eagle Pass, I believe.

Q. But you found no record of it at all in the Highway Department?

A. There was a record in the form of an escrow certificate in the files of the Department. There was no ledger account.

Q. No ledger accounts at all?

A. It was filed in the regular project file of the county.

Q. Were any other items found?

A. That is the only one where we found money in the bank where they had apparently lost sight of it.

Q. What else did you find, if anything, with reference to that?

A. You mean of what class? Insufficient balances, and things of that kind?

Q. Yes, sir.

A. We found quite a few cases where there was apparently not sufficient balances in the bank to cover the amounts due the State. Those things arise through variations in the accounts. Sometimes they didn't put up enough to start with, the job was more than they thought it would be, and they never put up the balance. We have a list of those in here.

Q. Where did you find those?

A. On page 74 and page 75 of this report, a list of projects on which the balances in the escrow accounts were less than the amounts due the Highway Department.

Q. Now, these escrow checks that are being held by the Highway Department, as you said a moment ago, running around six million dollars,—warrants being held—

A. (Interrupting) No, sir, that is not a correct figure for escrow checks being held.

Q. How much is the amount?

A. The checks being held over there—

Q. (Interrupting) I beg your pardon, it is something over a million.

A. A million and some odd thousand dollars.

Q. Did you learn whether or not

anyone is paying any interest on these deferred payments, or these warrants that are being held?

A. I didn't investigate that feature but I presume that the depository bank would be required to pay interest to the county until certain time as the money was withdrawn.

Senator Stone: On what date was this?

A. Which?

Senator Stone: This one you just mentioned?

A. That was on February 11th, 1933, that we investigated the Security Trust Company.

Senator Martin: I believe, Mr. Chairman, somebody else might have some questions they want to ask the witness. I want time to investigate some records and I will pass the witness for the time being.

The Chair: I will recognize Senator Redditt.

Q. (Senator Redditt.) On page 69 of your report I wish you would explain that with reference to "Amounts deposited in escrow for county aid." The objection and criticism you make there is the way the accounts were handled?

A. You mean on page 69, the last paragraph of the page?

Q. Yes, sir.

A. Probably if I will read that—

Q. Yes, sir, that is what I want you to do.

A. "It was found that the records of the Highway Department consisted only of escrow resolutions signed by the County Commissioners Courts; certificates of deposit signed by the depository banks, which were filed in the project files and correspondence files of the Department; and a memorandum record kept by the Superintendent of Aid Projects, which consisted only of the date and amount of the original deposit. No ledger accounts were set up for escrow funds and the amounts withdrawn from such funds were not shown on the records in such manner that the balances in escrow could be determined readily."

Q. You merely mean by that you think better records should have been kept?

A. Yes, sir, in order to determine how much balance was in escrow in any of these accounts it was necessary for us to accumulate records from various sources and put them

together to determine the balance. That is an accounting problem and the criticism there is of the accounting procedure, that the balances could have been readily available in a ledger account.

Q. With reference to this Security Trust Company matter that we have been investigating, these escrow agreements with the various twenty-two counties and the State Highway Department, whether or not there will be a loss in those transactions depends entirely upon the value of the securities placed in escrow as security for those deposits?

A. I couldn't say that, Senator, because the total recovery would depend altogether on what could finally be recovered in liquidation of the bank, and as I said to Senator Martin that is a matter of legal construction.

Q. That is the point I make. At this time it is impossible to ascertain just whether or not there will be a loss, and if there is a loss the amount of it?

A. Somebody might be able to ascertain it but I haven't made any investigation to determine it.

Q. It will depend upon the liquidation of the bank and the value, of course, of these securities?

A. Yes, sir.

Q. I think that is all.

Senator Woodward: I would like to ask a question, if I may?

The Chair: Senator Woodward.

Q. (Senator Woodward.) Mr. Carter, when did you ascertain about the Athens Bank matter?

A. In checking the escrow accounts in the first part of 1931, Senator. I can't tell you the exact date.

Q. In the first part of 1931?

A. Yes, sir.

Q. You determined then that there was a criticism you should offer, didn't you?

A. Yes, sir.

Q. Mr. Moore Lynn, the Chief Auditor, was aware of that fact at that time, wasn't he?

A. Yes, sir.

Q. Do you know Mr. Harry Washburn?

A. Yes, sir.

Q. Do you regard him as a competent auditor?

A. Yes, sir.

Q. Don't you know that is the auditor who arranged and recommended and set up the bookkeeping

features of the State Highway Department?

A. Yes, sir.

Q. What criticism was it you had of the escrow feature of this book-keeping department?

A. Was not possible from any one point to determine what the balances in escrow at any time were. That it was necessary to go first and find the escrow certificates which we had to pull out of the various files. Then we had to check through to find out what had been paid out of those escrow accounts and balance those together, and in some cases we had to go to the county record, and in some cases to the bank record direct.

Q. But you did, in fact, find it, didn't you?

A. Yes, sir, we finally found the balance in each bank.

Q. Your criticism is they could have had a better system of keeping those records?

A. That criticism is strictly a criticism of accounting procedure?

Q. And that would be leveled at the system as inaugurated by Mr. Washburn?

A. I couldn't say exactly what his original recommendation on that was because I don't know. I don't know whether he recommended anything in that respect.

Q. If he did, then your criticism goes to his system?

A. Yes, sir. If he recommended it, and it was not done, then it would be a criticism against the one who should have done it. If he didn't recommend it, I would say that is one fault of the system as set up.

Q. Then your complaint is that the system they adopted in respect to keeping tally on the escrow fund was that it did not enable the auditor to find it all in one place?

A. Yes, sir, or it didn't enable the employees of the department either to find it in one place.

Q. They would have to go to other records?

A. To go to various sources to try to accumulate the records.

Q. You said at the Governor's request to make a list of these counties involved and the securities they put up?

A. Yes, sir.

Q. When was that request made?

A. In a letter of February 10th,

1933, signed by J. H. Davis, Jr., Secretary to the Governor.

Q. Give me the date again.

A. February 10th, 1933.

Q. And you furnished that information?

A. On February 11th.

Q. Did you furnish the Governor with the copy of the letter signed by Mr. Cone Johnson to the Attorney General that has been read in evidence?

A. No, sir, we furnished him a copy of an extract from the Attorney General's opinion, but not a letter from Mr. Johnson.

Q. Where did you find that copy of the opinion?

A. We get copies of the Attorney General's opinions. I got that copy out of our file. I don't know whether it came up to us as a specific request, or in the regular routine.

Q. Why didn't you furnish the Governor with a copy of the second reply of the Attorney General?

A. I didn't have a copy and didn't know there was one.

Q. Did you have any information then of a letter that had been written by Judge Sims to the Attorney General's Department?

A. No, sir.

Q. You didn't have any information as to the reply that the Attorney General made to Mr. Johnson in reply to the second opinion rendered?

A. No, sir, I did not.

Q. If you had had access to that and if you had known that second opinion had been given by the Attorney General, would you have reported that the Highway Commission had violated the law?

A. I didn't report the Highway Commission as violating the law.

Q. And you don't think now they violated the law?

A. That would be a matter of opinion and I don't care to express an opinion.

Senator Martin: He testified that he is not a lawyer and is not able to pass upon these legal questions, and for him to state what his opinion is is immaterial.

Senator Woodruff: Well, they have been asking his opinion and what the statutes provide?

A. I think in each case I told them I wasn't capable of giving a legal opinion.

The Chair: I think the witness has made that clear heretofore. For

the sake of the record I will sustain the objection as made.

Q. Will you state in your opinion that the Highway Commission did violate the law?

A. No, sir, I will not express an opinion on that.

Q. I believe you said you had made no estimate of the value of the securities which were given by the Security Trust Company to the several counties?

A. No, sir.

Q. Then you are not in position to say those securities are not ample to protect the counties?

A. No, sir.

Q. Have you made any investigation as to the value of the securities which the several counties placed in escrow at the American National Bank in order to secure the State Highway Commission for the amounts of money due by the several counties?

A. No, sir, I have made no investigation of the value of any securities.

Q. Then you are not in position to say that those securities are not sufficient to protect the Highway Department?

A. No, sir, I haven't any information to give you on the value of any securities.

Q. Did you help to compile all of the reports in reference to the State Highway Department?

A. Yes, sir, I helped, I think, on all of it.

Q. Well, I am reading to you a part of the auditor's report of date July 16, 1932, which I believe was subsequent to the time you discovered the Athens Bank deposit matter. This report reads: "The primary function of the State Highway Department is the construction and maintenance of highways throughout the State. The Department's expenditures for all phases of its activities for 1930 were in excess of \$47,000,000; and for 1931 they amounted to nearly \$43,000,000. Considering the size of the organization, the volume of transactions handled, the technical nature of the work, and the immense area covered by its operations, the Department as a whole was found to have been managed in a business-like and efficient manner." Was that a correct report?

A. That, sir, taken as a whole—

Q. (Interrupting) Answer my question. Was that a correct report?

A. Your question, Senator, is a little bit involved and will have to be amplified.

Q. You can't answer it yes or no?

A. I will not answer yes or no.

Q. Was that a true report?

A. It is subject to the other criticism which we have made of various operations.

Q. Now then, in this report you did not call attention to the Athens Bank matter?

A. Yes, sir.

Q. Where is it found?

A. I will have to look at the report, if you will let me see it.

Q. All right, sir. I will hand it to you.

A. It begins on page 42 and runs over onto page 43.

Q. That is the report of date July 16, 1932?

A. Yes, sir.

Q. Now, you said something about a post-dated check?

A. Yes, sir.

Q. What check was that?

A. That was a check drawn on the Athens National Bank in favor of the Highway Department dated January 15, 1931.

Q. Explain what you mean by a post-dated check?

A. A check that is delivered to a party to whom it is payable but not immediately payable at the bank on which it is drawn.

Q. In other words, it is a check given in advance of the date on which it may be legally presented?

A. That is true.

Q. Now, when was that check drawn?

A. The best information I could get it was in November, 1930.

Q. And when was it you discovered that check?

A. It was sometime in either March or April, 1931.

Q. Where did you find it?

A. Mr. Hank, of the Highway Commission, had possession of the check at that time.

Q. And what was the condition of the bank at that particular time?

A. The bank was in process of voluntary liquidation.

Q. And when did it go into the hands of a receiver for the purpose of being liquidated?

A. The best information we could get was on March 8, 1931.

Q. Subsequent to the date of the check?

A. Yes, sir.

Q. Now, did you make an investigation as to why the check had not been deposited with the State Treasurer?

A. Yes, sir.

Q. An explanation was made to you with reference to it, wasn't there?

A. Yes, sir.

Q. The check was not concealed, it was not hidden or held out?

A. No, not so far as I know. It was immediately presented when I questioned it.

Q. You said if the check had been presented,—no, you said something about some check,—some tax money having been deposited in that bank?

A. Yes.

Q. When?

A. The tax moneys were deposited along with the other collections along the first part of 1931; I don't know the exact dates.

Q. What did the Highway Department have to do with the tax money that was put in that bank?

A. Nothing whatever.

Q. What was your object in mentioning the tax money which was put in that bank?

A. Because the gentlemen there asked me about all State funds.

Q. And you were merely listing that money among the other funds?

A. Yes, sir.

Q. I did not catch the connection, Mr. Carter, is the reason I asked that question.

Senator Woodward: Senator Purl wanted to ask some questions, and I told him I would yield part of my time to him.

Q. (By Senator Purl) How many conferences have you had with either Jim Ferguson or Governor Ferguson since they have taken office?

A. None.

Q. With neither one of them?

A. No, sir.

Q. Did you have any conference with either one of them before Mrs. Ferguson took office?

A. One.

Q. Which one?

A. With Mr. Jim Ferguson.

Q. Where about?

A. At his office in the Nalle Building.

Q. Did you call him, or did he call you down there?

A. He called me.

Q. Did the conference have anything to do with this hearing?

A. It had nothing whatever to do with it.

Q. It had nothing to do with highway matters?

A. He talked about highway matters, along with other things, just in a general way during the conversation; there was nothing specific in it.

Q. Not casting any reflection whatever, but in the most charitable of terms, you don't agree with the statement in the Ferguson Forum as to the message sent up here over Mrs. Ferguson's signature? That is an error, isn't it, as to there being a shortage in the Highway Department of a million dollars?

A. I don't know exactly what statement you refer to.

Q. I will read it. I want to put this in the most charitable way; I want it in because it mentions your department. Above the letter it said the Governor had stirred up a hornet's nest, then quoted the letter, then under that it says: "The Senate has passed a resolution requesting the Governor to give her source of information and the number of counties involved. She is furnishing this information to the Senate, showing the number of counties and the amount of the bonds of doubtful value held by each county. She did not send her message to the Legislature until she had requested the State Auditor to inspect the records of the Security Trust Company and the State Highway Department, and he in a written report to the Governor has verified all the matters stated in the petition." I want to know whether the Auditor's office verified the matters stated in this petition?

A. The Auditor's office was asked for specific information. In answering your question I would like to read part of the Governor's letter that called for the information, and then I will tell you exactly what information we furnished.

Q. All right.

A. The letter says she desires to know how much money the State

Highway Department has expended for work, labor or materials furnished in the performance of this matter, and the amount of all checks or drafts or obligations it has now in its possession drawn upon the Security Trust Company, giving in particular date of same as well as the amount of each draft. Also include name of party drawing said draft and upon whom drawn. In response to that letter we furnished this information.

Senator Woodward: Who signed that letter?

A. J. H. Davis, Jr., Secretary to the Governor.

The Chair: What is the date of that letter?

A. February 10th, 1933. We furnished in answer to that letter a list of all the escrow accounts in which we found a record of deposits having been made in the Security Trust Company. In that we showed the name, amount, the project number involved, the amount charged to the account on the books of the Highway Department; the balance deemed necessary to complete certain projects; the balance on deposit in the bank as of that date; the unpaid checks on hand, held by the Highway Department, and the total value of the securities placed by the Security Trust Company with the American National Bank. We also furnished, as requested, a detailed list of the checks held by the Highway Department; a list of the securities placed with the American National Bank, as reflected by the certificate of the officers of the bank; copy of the special escrow agreement under which these deposits were placed; and copy of the Attorney General's opinion, dated January 27th, 1932. Further than that we made no comments, and specifically stated we had not made any valuation as to the value of the securities.

Q. Mr. Carter, this law under which Mr. Moore Lynn is the State Auditor, and under which you are the first assistant auditor,—that is your title — —?

A. Yes, sir.

Q. That is a law known as — — as a matter of fact and as a matter of law the official name and function is State Auditor and Efficiency Expert?

A. Yes, sir.

Q. It is not only the duty of the State Auditor to turn down accounts where there may be something wrong, but it is also his duty to go into those accounts and to make reports with the view of raising the efficiency and standard of these offices?

A. That has been our policy.

Q. The vast majority of your work, and Mr. Moore Lynn's work, too, has been in making recommendations as to increasing the efficiency of these departments rather than to find something wrong, isn't that right?

A. In making an audit we cover both phases of it at one time. We make recommendations that will increase the efficiency, and if, in the course of the investigation, we find anything wrong we report the facts.

Q. In your report on the Highway Department,—I could let it apply to the other departments, but I will hold it down to the Highway Department—did this criticism have to do with the efficiency in handling State funds, as well as expenditures passed in orderly fashion, as well as finding out whether any funds have gone to the wrong channels?

A. Yes, sir.

Q. Is your criticism of the Highway Department based on your audit and survey, bearing in mind you are an efficiency expert as well as an auditor; is your report to be taken as suggestions to increase the efficiency more than it is a criticism of anybody there having done anything wrong, personally wrong?

A. Whenever we have made a recommendation it is for the purpose of correcting a condition that we thought needed correction; and in any case where we thought that any official or employee was wrong we reported that officially.

Q. Take the commissioners, Mr. Joe Ely, Mr. Martin and Hon. Cone Johnson, you found nothing that would reflect on any of those Commissioners personally, their personal integrity in any respect?

A. You mean honesty, I suppose, Senator?

Q. Yes. Letting somebody else's money get into their pockets?

A. We haven't found anything of that character, and the report does not reflect that, no.

Q. That also obtains as to Mr. Gibb Gilchrist?

A. That is true.

Q. And the heads of the departments; you have found nothing that would reflect on their personal honesty?

A. We haven't found anything against anybody's personal honesty. We have reported minor cases in connection with some of the pay-rolls.

Q. If you take the three Commissioners, and Gilchrist, and the men who are the heads of the departments, as well as employees,—I will leave off the employees for a minute;—you have found nothing that reflected on their honesty and integrity in handling the State's money?

A. That is a question that is a little bit hard to answer, Senator, because there are so many different interpretations of what you might call integrity, etc.

Q. I will put it personal honesty, just common honesty?

A. We have found nothing that reflected on the personal honesty of any of the Commissioners or any of the heads of departments.

Q. Now, then, as to the employees; you have made some suggestions and criticisms concerning payrolls in remote parts of the State, and minor loose arrangements on accounts and things?

A. Yes, sir, we have reported various items, possibly a little hard to put them into a general statement. We have been very specific in every criticism, and all of our recommendations are very specific; and I think a perusal of the report will show that where we thought anything was wrong we have said so without mincing words. We try to be fair always.

Q. I want you to listen to this question. It may not be pertinent, there may be some objection, and I don't want to put it into the record if it is not in order. You have been auditing the Highway Department for about how long?

A. About a year and a half, or a little better.

Q. That consisted, with the exception of six months, with all of Governor Sterling's administration; he served two years?

A. We began in 1931, yes.

Q. Then you are familiar with the affairs of the Department, have close contact there?

A. Yes, sir.

Q. Now, during the time you were there did you find anything that would justify anybody in saying that there was a hundred million dollars' shortage, or money that had gone into the wrong channels?

A. If there is anything of that kind we couldn't find it. As we mention in our report, there are certain phases of the Highway Department's activities which we were not able to examine in detail. An auditor always has to qualify any statement that he makes for work that he has not done; but I will say that as far as we have been able to find in checking the records, we have not found a hundred million dollar shortage.

Q. You didn't even find one million dollars shortage, did you?

A. No, sir.

Q. Did you find a hundred thousand-dollar shortage?

A. No, sir, we did not find, — — that word shortage is another item that is widely used, and is subject to various interpretations.

Q. The commonly accepted interpretation of the term, what the man in the street understands. If a man in the street is given a hundred dollars to keep, and they search him and he has just got forty dollars he is sixty dollars short?

A. We found no large cash shortage of any kind.

Q. Most of the shortage was a matter of bookkeeping, or not placed in the proper account, or what?

A. Talking again about shortages, Senator, we haven't so far as I can remember, reported in here items that you would call shortage in the sense of somebody stealing money, and putting it in their pocket. The only things like that we found was where some section foreman had a man on the payroll when that man was not working.

Q. That is liable to happen under the best regulation?

A. With the number of employees involved it is likely to happen in any organization.

Q. How long have you been in the Auditor's department?

A. Since November, 1920.

Q. You are fairly familiar with the other departments of the State capitol, are you not?

A. Yes, sir.

Q. As well as the various institutions scattered out over the State?

A. Yes, sir.

Q. Now, comparing the Highway Department with the other departments in the State capitol, would you say the Highway Department has got the best system of checks and balances of any department in the state?

A. I couldn't go that far, as I haven't investigated all of the departments. Some of the departments have mighty good systems. I will say the Highway Department has a well designed and fairly accurate system; although we found many things that could be improved.

Q. Yes, that comes with the efficiency end of it, doesn't it?

A. Yes, sir.

Q. I believe that is all.

Questions by Senator Woodruff.

Q. Mr. Carter, on page 78 of Volume 10 of your report I find this language, which, I think, has been read to you by Senator Martin: "The situation has been mismanaged so completely—"

A. I beg your pardon, Senator, it is not on 78.

Q. It is 78 in this book.

A. Oh, yes, that is right.

Q. "The situation has been mismanaged so completely and the interests of the State and of Henderson County in this case have been neglected so flagrantly that it is recommended that all of the circumstances relating to the deposit of State and county funds in this bank and the later liquidation of the bank be investigated thoroughly by a committee of the Legislature, in order to place the responsibility for the loss that has, apparently, been suffered by the State and by the county, and for the entire situation as it now exists." Your criticism related wholly to the Athens bank situation, didn't it?

A. Yes, sir.

Q. And did not intend that any applied to the State Highway Commission as a whole?

A. No, sir.

Q. Now, Senator Purl has asked you with reference to that audit of the State Highway Department, and as to whether or not you found any shortages? You referred to an incident or two where section foremen have probably padded the payroll ac-

count, that was the report made, wasn't it?

A. Yes, sir, each individual item stated in detail.

Q. And that was immediately corrected by the Highway Department, wasn't it?

A. Yes, sir, and the employees were discharged immediately.

Q. Now, have you found any shortage of funds in your audit of the Highway Department that reflected against the honesty or integrity of the Highway Commission or Mr. Gilchrist?

A. In talking about "shortage," Senator, you mean the embezzlement or misplacement of cash? We found none.

Q. Now, I say, you found no shortage of cash or funds of the Highway Commission that led you to suspect that either the Commissioners or Mr. Gilchrist had appropriated the funds themselves, or anybody else had appropriated the funds?

A. We did not find any cash shortages in the account.

Q. Now, Mr. Carter, I believe you stated that your office is known as State Auditor and Efficiency Expert?

A. Yes, sir. We are not very proud of the title, however.

Q. Well, you regard yourselves—and I am asking this politely—you regard yourselves as experts in the auditing department?

A. We are satisfied with "Public Accountants." We are not inclined to throw bouquets at each other.

Q. Well, I was asking you that as a qualification for another question, that is, the qualification with reference to your being an expert in that line?

A. Yes, sir.

Q. Also Mr. Moore Lynn?

A. Yes, sir.

Q. You would regard him as an expert, as you are?

A. Yes, sir.

Q. Now, then, I want to go over with you, first, and I want to ask you what you would have done as an efficiency expert: Concho County voted bonds amounting to some two or three hundred thousand dollars. They advertised for the sale of those bonds, and the Security Trust Company purchased those bonds and entered into a contract with Concho County to act as its depository, and delivered to Concho County a deposit slip showing the amount deposited.

The Highway Commission had nothing to do with that. Contracts were let by the State Highway Department for the purpose of constructing highways in Concho County, and Concho County agreed to pay her share of the costs of such construction and to furnish right-of-way and further the construction of the highways. The Security Trust Company was unable to pay the Highway Commission moneys upon which drafts or warrants had been drawn by Concho County, and Concho County, through her representatives, agreed with the State Highway Commission when that condition was discovered, that she, the county, would deposit with an escrow agent, to-wit, the Austin National Bank, securities which the Security Trust Company had theretofore pledged as security for the deposit of an amount equal to the indebtedness of Concho County at that time due the State of Texas, and the Attorney General of this State advised the Highway Commission that that could be done and would be legal; and that was done. Now, as an efficiency expert, what would you have done under the circumstances if you had been the State Highway Commission?

A. That is entirely a matter, not of efficiency, but of discretion.

Q. Well, what would you have done?

A. I can't answer that question, Senator, and I don't believe that my opinion would be of much value to you. This is a matter that involves more legal phases than it does an accounting basis, there is no accountability involved in it, it is merely a matter of discretion and office judgment.

Q. All right. Now, have you any criticism to offer of that arrangement which was finally made under the facts I have stated to you?

A. I don't think I am one to make criticism of that.

Q. I will ask you if you had criticism—

A. If I had the matter to pass on, I would investigate other means for the security of the deposit, which would amply allow time to get the money, that is just my personal opinion.

Q. All right. If the securities are not sufficient, but you have got the money?

A. Well, that is another question.

Q. Well, assuming you are an efficiency expert and you are a Highway Commissioner, in that situation how would you have got your money?

A. As I am not a member of the Highway Commission, I don't think my opinion on that question would have any weight.

Q. Well, I am trying to qualify you as an expert, an efficiency expert, to ascertain whether or not the program carried out was contrary to good business management in that institution over there.

A. It depends altogether, Senator, on various factors involved.

Q. I am giving you a supposed case.

A. The question is whether or not the Highway Department was obligated and couldn't get out of building the roads and whether it had any other resources and required any greater securities.

Q. Well, it ought to be said on these phases involved, while it didn't require any greater securities than the securities of the bank in an amount equal to the debt of the county. Now, if the Highway Department had not taken these securities, where could it have gotten the money, do you know any place?

A. That is another matter, I say, involving, of course, as to whether they intended to build the road or whether they intended to get the money or not.

Q. Well, now, then, suppose the state of fact was, you say it was discovered—that supposed condition—didn't you?

A. I didn't investigate to see how Concho County lost its bonds or what became of the proceeds, or anything of that kind.

Q. Well, say it lost them. You didn't intend your report to say that by reason of that arrangement the Highway Department was short a million dollars or any part of a million dollars?

A. We are not charging they are short.

Q. Yes, sir. Well, now, it is not intended to convey the idea that by reason of the arrangement the Highway Commission made with several counties with respect to the matters I have mentioned brought about a shortage of a million dollars or any part of a million dollars?

A. We haven't found any short-

age; in fact, we couldn't get at the status if we wanted to.

Q. Now, get back to this, this is the part I quoted on page 78, it is in addition to your comments in your report of July 16th, is that true?

A. I think it is, yes, sir. I cannot tell without reading both of them, I would have to compare them, but I think it is in both.

Q. Now, when was this additional comment prepared?

A. When this report was prepared, sometime along in December.

Q. December of this year?

A. 1932.

Q. Senator Purl asked you about having a conference with Mr. Jim Ferguson. When was that?

A. I think it was in November, 1932.

Q. Then, this additional criticism was subsequent to that conference with him in November, 1932?

A. Subsequent to, but had no connection whatever with it, and the matter wasn't mentioned any time in the conference. I would be glad to state what that conference was.

Q. Wait just a minute. I didn't ask you whether it was connected with it at all. I am fixing dates.

A. All right.

Q. This report was made, then subsequent to that time?

A. The final of it, yes, sir. It was in progress several months along, I don't remember exactly when this was written, it may have been written later.

Q. And at the time that it was written, you and Mr. Moore, both of you, were then acquainted with the Athens Bank situation, weren't you?

A. Which one?

Q. This included in the report of July 16th.

A. The report of July 16th is all from a condensed report and other matters, and the report now includes matters of detail that were not included in the report of July 16th; in other words, one is a summary, and the other is a full report. That is the reason.

Q. That is the reason?

A. Yes, sir.

Q. But that particular criticism was not in that report?

A. No, sir. We called attention to it, and they said the matter was in the hands of the Attorney General.

Q. Then you did not intend to

include all this language, that part of the report that I am reading: "The primary function of the State Highway Department is the construction and maintenance of highways throughout the State. The Department's expenditures for all phases of its activities for 1930 were in excess of \$47,000,000.00; and for 1931 they amounted to nearly \$42,000,000.00. Considering the size of the organization, the volume of transactions handled, the technical nature of the work, and the immense area covered by its operations, the Department as a whole was found to have been managed in a business-like and efficient manner."

A. In addition to that, Senator, you want to also read—

Q. I am not asking that. All I am asking you is did you intend when you wrote part of that report, and since the report, to include in that report criticism of the Athens Bank? If the criticism is included?

A. That criticism is included. And it is unfair to the auditor to read one part without reading the entire report.

Q. You called my attention to it.

A. Yes, sir, and I called your attention to many things that are off.

Q. Now, you also testified that the escrow system over there wasn't good?

A. Yes, sir.

Q. Didn't you mention in this report, "The accounting system is very well designed, having been installed as of September, 1927"?

A. That is right.

Q. "The accounting system is based on double entry bookkeeping and comprises not only accounts but appropriations and also accounts which are designed to provide information as to the cost of construction and maintenance of roads, and analysis of the expenditures made for the various activities of the Department." Is that one part of that report?

A. If you will also read, you will find other averments.

Q. I didn't ask that, just answer, that was in that report?

A. That was in that report, yes, sir, and in general was a true statement.

Q. Well, I am assuming that it is true, Mr. Carter?

A. Yes, sir.

Q. Now, Mr. Carter, I want to go

back a minute to get the matter straight. I believe you said that this Volume 10 contains the final report?

A. The final report of this particular section of the audit, yes, sir, with recommendations.

Q. Well, that includes this bank matter?

A. Yes, sir.

Q. It includes the Security Trust Company matter?

A. Yes, sir.

Q. And it contains those favorable reports that were in the report of July 16th?

A. I think if you will read through the report you will find practically the same thing all the way through.

Q. To say the least, though, you intended to carry forward in your final report the same complimentary memorandum that was contained in your report of July 16th?

A. You will find both complimentary and criticisms.

Q. I am asking you about complimentary?

A. You will find complimentary as well as critical statements.

Q. I will ask you this: You did not intend to exclude from the final report any of the favorable reports included in the report of July 16th?

A. I didn't intend to. Both sides were shown, we tried to say it was good. We tried to show it with truthfulness, and it is found very specific, I think.

Q. Well, in other words, the two reports combined there?

A. I think you will find them both in the final report.

Questions by Senator Martin.

Q. Do you have that preliminary report with you that you examined a while ago?

A. No, sir.

Q. I will ask you to look at this preliminary report, the report here that I hand you, look at page 39 and see if you have anything in there with reference to or your comments on escrow accounts?

A. Yes, sir. On page 39 this is shown from the report: "No ledger accounts were set up for escrow funds, and the amounts withdrawn from such funds were not shown on the records in such manner that the balance in escrow could be determined readily. It is recommended that ledger accounts be opened for

each deposit and that withdrawals from such accounts be posted thereto, in order that disposition of funds in escrow may be determined readily, and that the correct balances in escrow may be ascertained."

Q. I will ask you to look at page 43 of that report, that particular book, and see if you can find any comments made there with reference to the Athens bank proposition?

A. It begins on page 42 and goes over on page 43.

Q. Without putting that in the record, then you did call that to the attention of the Department at the time, and put it in your report?

A. Yes, sir.

Q. In your statement, your preliminary statement, on page 16, you did refer that matter to the Attorney General's Department?

A. We stated that it had been referred to the Attorney General; it was referred to the Attorney General prior to that date.

Q. Now, you had learned that that bank over there was in process of liquidation?

A. Yes, sir.

Q. There were State funds on deposit in that bank and there wasn't a human doing anything about it?

A. I didn't understand your question, Senator.

Q. You didn't find that there was a living human, the Highway Department or the Commissioners or the employees doing a thing about that account?

A. I can't say that they weren't doing anything about it; but we didn't find any active attempts to make collection.

Q. And have you had any occasion to examine or seek to see whether or not there had been any effort made to make collection of it?

A. The matter has been in the hands of the Attorney General, I think, continuously since that time; I asked about it once or twice.

Q. Now, you mentioned a conference you had with Jim Ferguson, what was the nature of that conference?

A. Our office, as you understand, is directly under the Governor's authority to a certain extent —

Q. Directly under what?

A. Under the Governor's authority for appointments.

Q. Huh?

A. A number of our employees,

some of the best men we had on the staff, were anxious to know whether they were going to lose their jobs immediately after the election; in order to give those men something definite as to whether they could expect to continue with the Department, or whether they would have to get out and hunt new jobs, and we would lose their services immediately, I asked the Governor, Governor Ferguson, to let us know what his intention was toward the Department, whether he expected to remove our staff men immediately.

Q. That has nothing on earth to do with any particular audit you have made of any department, does it?

A. No, sir; it was confined entirely in connection with the personnel of our staff.

Q. You stated a while ago, in answer to Senator Woodward's question there, with reference to the selection of this depository down here, that the Highway Department had nothing to do with that; now, you don't know whether the Highway Department had anything to do with the selection of the Security Trust Company as a depository for these counties or not, do you?

A. Senator, I beg your pardon; I don't remember making an answer of that kind.

Q. The question that was asked, if I understood it properly would have suggested such; if it did suggest such, then you did not intend to so answer it?

A. No, sir; the point I was answering at that time, as I understood his question, was in connection with the deposits in the Athens National Bank, which belonged to the Comptroller of Public Accounts.

Q. If the Security Trust Company is in a failing condition, and we know that it is not able to meet the obligations presented to it, it being here near the State Highway Department's headquarters, and the Banking Department being in the same building, don't you really think that it was the duty of the Highway Commission to ascertain something about the financial status of the depository of these various counties, where it was interested in the funds?

A. That's another question of opinion and administrative discretion, Senator. I think that I would

have, but they might think otherwise.

Q. You think you would have done so. The Banking Department is in the same building with the Highway Department, is it not?

A. No sir, it is not.

Q. It is not?

A. No sir.

Q. Well, it was in the capitol here then?

A. It was at that time, yes, sir.

Q. Then in passing upon the question of the honesty and integrity of these gentlemen, as was asked you a moment ago by Mr. Purl, you were not passing upon the question of whether or not they were derelict of duty?

A. I was passing merely upon the question of whether there was any embezzlement, you might say, of funds.

Q. I just want to call your attention to another place in your report on page 9; I believe you have got it there; look at that report; you say: "An extensive analysis was made of purchase requisitions issued during the fiscal year ended August 31, 1931. Details of the results of the examination are contained in Volumes 11 and 12 of the State Auditor's Second Biennial Report. Criticisms of bad purchasing practices and recommendations for changes in the procedure of making purchases are included in this volume under the subject caption of Purchasing;" did you put that in there?

A. No, sir. 1931.

Q. The following comment is quoted from a letter written by the State Auditor to the Chairman of the Committee on Organization and Economy, under date of September 12, 1932: "We have accumulated a mass of evidence which may or may not be conclusive, covering many points that may be the subject of argument and dispute. Undoubtedly there will be room for differences of opinion as to the propriety of certain purchasing methods employed, as well as the purchasing procedure in general. We believe that a full hearing on this subject before your Committee will be the best way to arrive at a final solution as to whether or not certain methods that have been employed were for the best interests of the State, and if not, what individual or department was

at fault." You put that in the report, did you?

A. Yes sir.

Q. Now the last sentence: "Inasmuch as it has not been possible for the Committee to hold a hearing on this subject, it is strongly recommended that the Legislature make a full investigation of the matter of purchasing;" you put that in there, did you?

A. Yes sir.

Q. I believe you said that the Athens bank gave you a list of all the securities put up with it at the time this escrow agreement was entered into between the Highway Department, the Security Trust Company, and the Commission?

A. They gave me a list showing the securities which they held on February 11th, 1933.

Q. Did they tell you in that statement that the securities which were originally put up had been shifted or changed?

A. They did not.

Q. Do you know whether or not that had been done?

A. I haven't made an investigation to see; we were asked only to furnish a list of the securities on hand at that time, and we furnished the information as requested.

Q. At that time, whether you made any investigation of that or not, you have since learned that those securities have been shifted since they were originally put up there, haven't you?

A. I have heard so, yes, sir.

Q. Do you think the source of your information was reliable, dependable?

A. That will depend on the exact date of the deposit of each security, and it can be determined by a detailed check, which we did not have the time to do, in response to this request.

Q. In connection with that, do you know of any bond man in Austin who is capable of passing upon the market value of those securities?

A. I have had no occasion to find out about bond men in Austin; I don't know any bond men in Austin.

Q. You don't know whether there is a bond man in Austin that knows anything about that?

A. I don't know that personally, no, sir.

Q. That's all.

Questions by Senator Sanderford.

Q. Mr. Carter, I believe your report showed that the State Highway Department had over two million dollars in certificates of deposit in the Security Trust Company.

A. I can tell you the exact sum, Senator; \$2,048,655.69; now that's the balance shown by the bank ledgers on February 11th, 1933.

Q. In certificates of deposit that are now being held by the State Highway Department?

A. We didn't check the certificate of deposit on this figure; we checked it from the bank's ledgers.

Q. Oh, I see; you got that from the bank; that's what the bank shows?

A. Yes, sir.

Q. But the items, so far as bookkeeping is concerned, and the State Highway Department, were kept in such a negligent manner that neither Mr. Ely nor any of the Commissioners or bookkeepers from day to day had any idea of what balance they really had there, did they?

A. Well, there was no information assembled at any one point where they could readily get at it; they could have gotten that by digging into their files and matching the figures together, as I said before.

Q. And they might have had a million or three million dollars so far as their records were concerned?

A. I couldn't say that they didn't know what they had there, but their bookkeeping records were not in such condition that it was absolutely clearly shown.

Q. Those certificates of deposit were made after it was known to the State Highway Department and the Chief Engineer and their bookkeeping department that this bank was not in a position to pay off any of those checks, were they not?

A. In order to answer that question, Senator, I will have to check the date of each certificate of deposit and ascertain from some source when they found out about it; that's a matter that I could hardly answer in that particular way.

Q. Well, they had a good bookkeeping system installed, I believe you said, in 1927?

A. The general outline of the system is good, yes.

Q. But they diverted from that good system that was installed and

didn't use it with reference to something over two million dollars in this escrow account, is that correct?

A. Without checking all of the original plans of the original set-up, I can't say whether they diverted or whether it was never included. I don't know. I just know the condition at this time. I haven't checked the original recommendations to see whether the escrow items were included, or not.

Q. In the Athens bank situation, according to the general statutes, each department is required to deposit with the State Treasurer all money received from all sources every so often?

A. Yes, sir.

Q. This check was due and payable on January 15th, 1932?

A. Yes, sir, 1931.

Q. It was not presented?

A. No, sir.

Q. And it had not been presented when the bank closed on March 8th?

A. That's the information we gathered.

Q. And as yet there has been no claim established at that bank for this sixty thousand dollars?

A. I don't know what claim the Attorney General may have established.

Q. You don't know whether he has ever established any claim for that or not?

A. No, sir. I don't know whether there has been a legal claim filed.

Q. The State Highway Department did not establish a legal claim for it, did they?

A. I don't know of any. They may have established some claim that I don't know about.

Q. And the bank is in liquidation and there is not a chance in the world for the people of the State of Texas to recover that sixty thousand dollars now, is there?

A. That's a question for the Attorney General to answer.

Q. But if the State Highway Department had acted in line of duty with good business management they would have presented that check when it was due and it would have been paid and the people would not have lost a penny, would they?

Q. I don't know whether it would have been paid; in due course it would have been presented, but whether it would have been paid would depend on the condition of

the bank the day it was presented.

Q. Did you find out anything from their records that showed whether or not there was a rush call down here from Athens, requesting them not to present that check?

A. There is nothing in the records to show it. We were told that, since the thing has happened, but there was nothing in the records to show that there was such a call.

Q. But the fact that they so neglected the interests of the people in not protecting their money in the Highway Department, that very fact is what caused you to write this into your report there, is it not?

A. That, in connection also with the fact that in addition to the Highway Department's money, there was other State money involved, and we felt that we were justified in making a statement of that kind, from the Highway Department angle on this sixty thousand dollar check, and also the other State matters involved.

Q. Fact of the business is that one item of sixty thousand dollars loss substantiates your charge in here that it was grossly mismanaged and neglected so flagrant—?

A. It will take a perusal and study of the entire story on that bank transaction, Senator, for you to understand just exactly how much we did intend to include in that recommendation.

Q. I see.

A. This item is part of it; there are other collateral items also that are a part of it; and we felt that the entire situation was big enough that somebody ought to look into it.

Q. If there had been no other items except the sixty thousand dollar item that was sufficient for you to write in here that the interests of the Department had been so flagrantly neglected that it should call for an investigation — —?

A. (Interrupting) We would have, if we had found that condition, and the sixty thousand dollar check would have been the only item,—we would have probably used the same words.

Q. Yes, sir. Did you, in your perusal of the records of the State Highway Department, find any special agreements between the Security Trust Company and the Highway Department?

A. Nothing only these escrow agreements.

- Q. Just the escrow agreements?
- A. That is all.
- Q. No other special agreements?
- A. I didn't find any. Of course, the files over there are very voluminous, and we have only examined such files as we were led into by the various investigations.
- A. Did you discuss the bank situation down here with any of the officials of the Highway Department while making this audit?
- A. I don't remember distinct discussions regarding it, no, sir.
- Q. Nothing that would lead you to formulate any reason in your mind as to why this particular bank that couldn't pay checks was selected as the depository for all of these counties?
- A. No, sir. In fact we didn't ask in any case why any bank was selected as a depository.
- Q. And they didn't volunteer, of course, to say why they selected an insolvent institution in which to do business?
- A. I don't know if it was insolvent at the time it was selected as the depository.
- Q. One that couldn't meet its drafts or checks?
- A. Our principal verification of these escrow accounts was made just about the time I understand this bank got into difficulties. Our principal investigation was made along in January or February, 1932.
- Q. Do you know who the directors of the Security Trust Company are?
- A. I don't remember them all. I happen to be personally acquainted with Mr. Ed Cravens.
- Q. Do you know whether most of them are local business men, or not?
- A. All I know is just as I have seen on the window as I pass down the street and recognize a few of the names, but I don't know the men personally.
- Q. Who is the attorney for them?
- A. I don't know.
- Q. You don't know whether General Keeling is?
- A. I do not.
- Q. Or Ex-Governor Dan Moody?
- A. I do not.
- Q. You don't know that?
- A. No, sir.
- Q. You don't know whether they hold stock in the company, or not, do you?
- A. No, sir.
- Q. You never heard anything to indicate that General Keeling helped to work up this law pertaining to the Attorney General's opinion on that matter?
- A. No, sir.
- Q. You never?
- A. No, sir.
- Q. (Senator Purl) Who did you say told you there was a rush call from Athens to hold up this check? Who did you say told you that?
- A. I didn't say.
- Q. Would you mind telling us?
- A. It was told to Mr. Lynn by somebody in Athens on an occasion when we were over there, I don't remember who it was; in fact, I wasn't personally acquainted with the man who gave the information.
- Q. Did you hear him tell him?
- A. I don't remember that I did.
- Q. Then maybe Mr. Lynn told you?
- A. Possibly he did.
- Q. Just what was it you understood was told about that rush call?
- A. I understood that an attorney from Athens came to Austin and requested the Highway Department not to deposit the sixty thousand dollar check, Senator. That is hearsay evidence, of course. I don't know whether it is admissible.
- Q. This other question. In your report there, do you recommend there be a legislative investigation concerning purchases of the Highway Department?
- A. Yes, sir.
- Q. Now that we have got an investigation on right now, sitting right in the middle of it, have you got any information you could bring to us at our next meeting that would throw light on that phase of it?
- A. If you gentlemen will read Volume 11 of our report the matters that I set out in there will give you sufficient information as to what I meant by that recommendation.
- Q. But since we are in the investigation, couldn't we just as well go into it now as to appropriate money for another investigation?
- A. Yes, sir, if you so desire.
- Q. (Senator Woodruff) At the time you went over to Athens to see about that bank transaction, did

you know that the Highway Commission had during the year 1930 had some difficulty in collecting the money due them on specifications submitted to the Highway Commission by highway contractors?

A. That is mentioned in here. We report that Mr. Hank went over there in November, 1930, and took certain post-dated checks.

Q. Did you understand the reason for Mr. Hank's visit to Athens in November, 1930, was to ascertain for the Highway Commission why it was that that county wouldn't respond to the request that it furnish the Highway Commission its part of the funds for construction of highway projects?

A. I didn't ask him particularly why he went over there. I just have the record that he did go over there and that he got certain checks.

Q. You were investigating every phase of the transaction, weren't you?

A. Yes.

Q. And developing a complete history?

A. Yes, sir, but there are certain phases or certain things that one man thinks about asking about, and certain things another man will think of. I didn't particularly ask Mr. Hank why he went over there and got checks. They owed the money and he went and got the checks. We made no criticism of him going after the checks.

Q. I will ask you if those checks are not on the following jobs and in the following amounts —

A. (Interrupting) I don't know.

Q. S. P. 817-D, \$8,803.74, evidenced by check dated December 1st, 1930?

A. You are asking about something that I don't have a record in front of me to identify. I don't know whether this report shows the date,—I mean the number of the job,—of the project, or not. I will look and see.

Q. See if you can find the checks and amounts.

A. I can find the checks and amounts, yes, sir.

Senator Sanderford: Page 77.

Q. Do you find a check dated December 1st, 1930, for \$8,803.74?

A. Yes, sir.

Q. But do you not find that was on job S. P. 817-D in Henderson County?

A. Our record here does not show the job numbers. I have the information in my files, but I do not have it with me.

Q. Do you have a record of a check for \$7,425.23 dated December 1st, 1930?

A. Yes, sir.

Q. To be applied on job S. P. 817-C?

A. I do not know what jobs they are to be applied on.

Q. Do you have a check for \$5,176.86 dated December 1st, 1930?

A. Yes, sir.

Q. To be applied on job S. P. 881-B?

A. I haven't any numbers here.

Q. Do you have a record of a check for \$23,149.47 of date January 1st, 1931?

A. I didn't catch the amount.

Q. \$23,139.47?

A. Dated January 1st, 1931? Yes, sir.

Q. But you do not find that was to be applied to the county's portion of job S. P. 845, a construction job?

A. I have no job numbers in this report that I am looking at.

Q. Do you have a check for \$14,432.20, dated January 1st, 1931?

A. Yes, sir.

Q. But you do not find that that was to be applied on the county's portion of job F. A. P. 556-E?

A. The job numbers are not shown in this report, but I have the information in my files if necessary to get it.

Q. Do you have check for \$14,024.23 dated January 1st, 1931?

A. Dated January 15th.

Q. January 15th, 1931?

A. Yes, sir.

Q. But you do not have the information that was the county's portion of job F. A. P. 575-E in Henderson County?

A. I have the information in my files, but not before me in this report.

Q. Check for \$16,585.10 dated January 15th, 1931?

A. Yes, sir.

Q. I assume from your answers that you do not have the information that that was Henderson County's portion of job S. P. 881-A?

A. The information is not shown in this report. If it is material I can get it.

Q. Do you have a check for \$10,913.64 dated January 15th, 1931?

A. Yes, sir.

Q. But you do not know whether that was the county's portion of job S. P. 817-B?

A. Not from this report.

Q. Do you have a check listed for \$60,669.56, dated January 15th, 1931?

A. Yes, sir.

Q. But you do not have the information that was Henderson County's portion of job S. P. 817-A?

A. I have the information on all of those in my files, but not in the report I have before me.

Q. Now, is it your understanding that Mr. Hank, for the Highway Commission, went to Athens in November, 1930, about the 18th, and got this list of checks on that date?

A. He got them some time in 1930. I don't know whether I have the exact date.

Q. Do you understand that the fund on which those checks were drawn was the property of Henderson County?

A. I understand that the fund on which they were drawn was escrow accounts which were supposed to have been placed to secure highway work.

Q. Was that Henderson County's money, or the Highway Commission's money?

A. That is a matter of legal interpretation. I would rather have the Attorney General pass on that.

Q. What do you think about it? You have qualified yourself as an expert, what do you think about it?

A. Just as I said before, I don't think my opinion on a legal question is a matter of interest.

Q. In auditing the account, did you treat it as the funds of the county, or the funds of the Highway Commission?

A. I would treat an escrow account as a joint account.

Q. Did you find in your investigation whether or not all of those checks listed that you have just referred to, except the one for sixty thousand dollars, were paid on the dates indicated?

A. I couldn't say that they were paid on the dates indicated, but they were paid.

Q. They were all paid?

A. Yes, sir.

Q. Do you know whether or not the Highway Commission made any effort to collect the sixty thousand dollar check?

A. I don't know. As far as I know it was never presented for payment.

Q. You said a while ago that somebody called the Highway Commission from Athens and asked them not to present the check on January 15th?

A. As I told Senator Purl, that is hearsay evidence. I asked Mr. Hank why the check wasn't deposited and he said he was asked to hold it. Mr. Lynn was told in Athens that an attorney from Athens came down here and asked them to hold it. I have no definite personal knowledge as to why the check was not deposited.

Q. Did they tell you that that attorney for the commissioners' court of Henderson County was Toddy L. Wynne, of Athens?

A. As I understand it, that is the man mentioned. As I say, it came to me second hand.

Q. Did they tell you that attorney told the Highway Commission that the bank was then in process of reorganization and that the check couldn't be paid by it, but if they would hold it for a few days it would be paid?

A. No, sir, they never told me why they held it. They just told me they were asked to hold it, and that is as far as they went.

Q. Did you ask them why?

A. Yes, sir. And Mr. Hank said that he held it because he was asked to.

Q. And that is as far as you inquired about it?

A. That is as far as I could get any definite information.

Q. You understood Mr. Wynne was representing the commissioners court?

A. I didn't know who. In fact, I can't testify from my own personal knowledge that Mr. Wynne was involved in it. That is a matter that came to me through other sources.

Q. Were you told later, on or about March 10th, 1931, that the resident engineer at Athens called the Highway Department and told them the bank over there had closed or was about to close, and they ought to get up there and see about that account?

A. No, sir, I wasn't told that.

Q. Did you make any inquiry as to what the Highway Commission did

with reference to the closing of the bank?

A. I couldn't get any information as to whether they had done anything, or not.

Q. Did you know that Mr. Hank, or Mr. Gilchrist and Mr. Christopher, Assistant Attorney General, were in Athens the morning after the bank closed,—that is, they were there on March 11th, 1931?

A. No, sir.

Q. To see about this sixty thousand dollar check?

A. No, sir. No one ever told me they were over there.

Q. You knew the Attorney General went over there, didn't you?

A. Yes, sir, because the Assistant Attorney General went over there with me.

Q. Do you know whether or not one of the Assistants Attorney General had been over there before you went over there?

A. No, sir, I do not.

Q. You didn't inquire about that?

A. No, sir.

Q. Regardless of the details, or what happened, and regardless of that, you neglected to go into those details in every aspect, or to develop for your report, and a full history of the transaction, you nevertheless are offering to write a criticism, as appears on page six or nine of your report to the Legislature?

A. I would just like to ask what you mean by my neglect to find out? I got all of the information I could get. I could not know of my own personal knowledge the things that were not told me. Now, about this check, I talked to Mr. Hank about it several times, and he never gave me any information about those things you asked about. It is not a matter of record.

Q. Notwithstanding the details of it, you failed to get the details, and you signed the report?

A. We signed the report with all of the detailed information we put in about it.

Q. I will ask you if in your investigation of this matter you found in the files of the Highway Department a letter dated July 27th, 1931, addressed to the Comptroller of the Currency, at Washington, in which the language as follows appears: "The Comptroller of the Currency, Washington, D. C. Sir: At the time of the failure of the Athens National

Bank, of Athens, Texas, there was on deposit with said bank approximately the sum of \$79,000.00 placed in escrow with the bank by Henderson County, Texas, to cover the County's share for the construction of certain State highways in said County.

"The escrow agreement entered into by the bank consists of a resolution by the Commissioners' Court of the County, and the certificate of the escrow depository, forms of which resolution and certificate I am enclosing herewith, from which you will observe that the sum so deposited in escrow was to be disbursed by the depository 'only in amounts released by the State Highway Engineer of Texas, or his authorized agents, on vouchers submitted by the said Commissioners' Court in payment of monthly statements, etc.'; the certificate of the depository stipulates that 'there has been deposited set aside and placed in escrow in this depository the sum of \$——, as recited in said resolution, and that said sum will be held to the credit of said Aid Project No.——, Federal Aid Project No.——, paid out only in strict accordance with the term of said resolution.'

"This Department is informed that liquidation of the affairs of the bank is proceeding, presumably, of course, under the direction and control of your department.

"We understand that some agreement has been made by which deposits of the bank subject to check are being paid partly in cash and partly with certificates for the payment of the remainder of the deposit; but so far as we are able to ascertain no agreement or provision has been made for the payment of the amount due the Highway Department by reason of the escrow deposit, therefore it seems that preference is being given to the ordinary depositors, and the Highway Department's claim is being postponed and discriminated against. This escrow fund was, at the time of the suspension of the bank, due to the Highway Department, but such deposit has been used by the bank contract to the deposit certificate and agreement.

"I write to request that you have an investigation made, if necessary, to ascertain the facts with reference to this matter, and furnish us with information concerning the same.

"We would be pleased to furnish you with any other facts concerning this matter, as you may desire. Our understanding is that the bank in fact, is insolvent, and that the liquidation is proceeding largely on assets which are of little or no value, or which, at best, cannot be realized on within any reasonable time. Yours very truly, Gibb Gilchrist, State Highway Engineer."

A. That is dated when?

Q. July 27th, 1931. Did you find that letter?

A. I don't remember that letter. Mr. Gilchrist gave us some information he had written the Comptroller, but I don't remember seeing that letter.

Q. I will ask you if you saw a letter, dated September 25th, 1931, reading as follows: "Henderson County. General Comptroller of the Currency, Washington, D. C. Dear Sir: I call your attention to my letter of July 22nd, having reference to the failure and liquidation of the Athens National Bank, of Athens, Texas, with which bank there had been placed on deposit in escrow County Highway funds the sum of approximately \$79,000.00. Please advise me when I may expect a reply to my letter, as the State Highway Commission is calling on me for a report in reference to this matter. Yours truly, Gibb Gilchrist, State Highway Engineer."

Did you see that letter?

A. I don't remember seeing that one.

Q. I will ask you if you saw this letter in the files in connection with your inquiry: "Treasury Department, Washington, October 8th, 1931. Mr. Gibb Gilchrist, State Highway Engineer, State Highway Department, Austin, Texas. Dear Sir: Referring to your inquiries of July 22nd and September 25th, regarding County Highway funds of Henderson County, Texas, deposited in the Athens National Bank of Athens, Texas; we have made inquiry of Mr. Dan Royall, who is liquidating agent in charge of the bank, and ascertained that as regards all of the Henderson County funds on deposit in the bank, an agreement was executed in March, 1931, by the Commissioners of Henderson County, and by the Attorney General of the State of Texas, agreeing that the payment of Henderson County funds be subordinated

to the payment by the bank of the claims of the individual depositors, the purpose of the agreement being to prevent a complete tying up of the funds belonging to the community pending liquidation of the bank, and for the further consideration of the paying into the bank by certain stockholders of a considerable amount of assets against which it would be possible for the bank to borrow sufficient funds to pay the individual depositors in full. This explains why such individual depositors have been receiving payment ahead of Henderson County.

The liquidating agent further states that at the time the agreement was entered into it was considered by the County Commissioners signing that the highway funds were embraced within the scope of the agreement, and the liquidator points out to sustain this viewpoint, the fact that the resolution of the Commissioners' Court of Henderson County relative to this State aid project fund specifically retains the fund within the control of the Commissioners of the county inasmuch as payment against same is on vouchers submitted by said Commissioners, inasmuch as the resolution further provides that the escrow fund is secured to the county by certain indicated securities. As we understand the Commissioners of Henderson County are at this time negotiating with the liquidator of the bank relative to the County fund, possibly you would receive material assistance or information relative to the said aid deposit by addressing an inquiry to the Henderson County Commissioners. Yours very truly, E. H. Gough, Deputy Comptroller."

Q. Did you see that letter?

A. I don't remember that letter being submitted to us. No, sir. You will understand, Senator, that the files are very voluminous, and unless we ask for a specific paper, or happen to run onto it, there is a possibility of us not seeing it.

Senator Fellbaum: Mr. Chairman, lots of the Senators have letters to sign, or read over, and we have a committee meeting up, and I move that we recess this hearing until tomorrow afternoon at 2 o'clock.

Senator Stone: I would like to ask about two questions before we adjourn.

The Chair: Proceed, Senator.

Q. (By Senator Stone) With reference to the letter you addressed to the Governor, was that with reference to all of the highway funds?

A. It was with reference to the funds in the Security Trust company.

Senator Stone: I want to introduce Mr. Carter's letter dated February 11th, to the Governor.

(Whereupon the hearing was adjourned until 2 o'clock p. m., Tuesday, February 21st, 1933.)

Supplement D.

(The following exhibit is the matter introduced by Senator Stone at the close of Monday's session, February 20th, 1933).

MIRIAM A. FERGUSON
Governor

J. H. Davis, Jr.
Secretary to the Governor.

EXECUTIVE DEPARTMENT
Austin, Texas.
February 10th, 1933.

Hon. Moore Lynn,
State Auditor
Austin, Texas

Dear Sir:

The Governor has been informed that the State Highway Department has advanced public moneys to various counties in the State, aggregating \$2,094,105.03, and that there has been deposited in a local bank certain securities in like sum for the benefit of the State Highway Department.

She is further informed that said counties have issued checks or drafts against their balances in the Security Trust Company of Austin in like sum for the payment of road work in their respective counties, and that said Highway Department did not and has not presented said checks or drafts to said Security Trust Company, and that they now hold the same in their possession and have had for nearly a year, and that in the meantime the value of said bonds so deposited with the local bank has depreciated at least

one million dollars, and that the State Highway Department by not presenting said checks or drafts for payment has lost at least one million dollars. She is further informed that said Security Trust Company has declined and has failed to pay said drafts and said Highway Department has agreed not to present said checks or drafts on it for payment.

The Governor is informed that this transaction took place some months and perhaps a year ago, and she instructs me to request you at once to call upon the State Highway Department and ascertain the terms of said agreement and the amounts involved and report to her at once. She is specially desirous of knowing how much money the State Highway has expended for work, labor or materials furnished in the performance of this matter, and the amount of all checks or drafts or obligations it has now in its possession drawn upon the Security Trust Company, giving in particular date of same as well as the amount of each draft. Also, include name of party drawing said draft and upon whom same was drawn. The Governor desires this information at once and if possible report to her not later than five o'clock tomorrow.

Very truly,

(Signed) J. H. Davis, Jr.
JHD:kt Secretary to the Governor.

STATE AUDITOR
AND EFFICIENCY EXPERT

Austin, Texas,
February 11, 1933.

Hon. Miriam A. Ferguson, Governor,
The State of Texas,
Austin, Texas.

Dear Madam:

In compliance with your request transmitted to me in a letter dated February 10, 1933, signed by J. D. Davis, Jr. Secretary to the Governor, I am transmitting to you herewith information concerning amounts deposited in escrow in the Security Trust Company, Austin, Texas, to cover county participation in cost of highway construction work.

As requested, I am submitting schedules and exhibits as follows:

	Page	
Schedule 1. Escrow accounts with the Security Trust Company, Austin, Texas, as at February 11, 1933,	4	"finaled" or engineering charges not yet charged to the counties. These amounts are subject to adjustments for overruns, underruns and other factors.
Schedule 2. List of checks held by the State Highway Department,	7	Balances on deposit with the Security Trust Company, Austin, Texas, aggregating \$2,048,655.69 are shown in detail by counties and projects in Schedule 1. These balances were obtained from the records of the depository bank.
Exhibit A, list of securities with American National Bank, Austin, Texas,	14	Securities held by the American National Bank, Austin, Texas, shown at a face value of \$2,119,328.45, to protect county deposits with the Security Trust Company are registered in detail in Exhibit A submitted herewith. I have made no attempt to place a valuation on these securities. Copy of special escrow agreement relating thereto is presented as Exhibit B.
Exhibit B, copy of special escrow agreement,	21	Copy of an opinion of the Attorney General, dated February 27th, 1932, relating to the handling of bonds and checks by the Highway Department is submitted for your information as Exhibit C.
Exhibit C, copy of Attorney General's opinion, dated February 27, 1932,	25	Respectfully submitted, MOORE LYNN, State Auditor and Efficiency Expert.
Reimbursements received as shown in Schedule 1, amounting to \$1,653,107.57 represent amounts charged to various counties as shown by the records of the accounting division of the State Highway Department for county participation in highway construction. Unpaid checks on hand totaling \$1,077,426.52, as shown in detail Schedule 2 were accepted by the Highway Department to be applied against the amount as shown as reimbursements receivable when and if paid.		(Photostatic copy of Schedule 1 is attached.)
Amounts shown in Schedule 1 as county participation not yet charged represent estimated county portion of project incomplete or not yet		

STATE HIGHWAY DEPARTMENT
ESOROW ACCOUNTS WITH SECURITY TRUST COMPANY, AUSTIN, TEXAS, FEBRUARY 11, 1933

County	F. A. P.	S. A. P.	County Participation		Balances on Deposit as at Feb. 11, 1933	Unpaid on
			Reimbursements Receivable	Not yet charged		
Andrews		936—C	\$ 34,690.03		\$ 39,134.32	\$ 3
		936—C3	31,017.58	118.77	42,671.15	3
		936—DI	30,722.52	11,201.22	6,765.53	
Bell		670—CI	66,627.13	3,739.35	70,858.81	5
		670—C2	1,942.97	2,138.69		
Bowie		922—D	2,921.53	7,107.98	7,397.16	
		922—G	12,555.78	2,112.69	13,241.61	
Burnet		809—B	2,447.22	2,447.22		
Calhoun		807—F	651.31	423.71	651.31	
		969—AI	3,102.92		3,292.10	
		807—E			990.99	
Colorado	506—G		22,306.51	5,236.92	22,306.51	
Concho	590—C		4,956.80		5,151.85	
	590—D		21,808.44	923.84	22,486.98	
	616—C		10,872.55	4,584.73	15,759.74	
	626—AI		19,524.99	14,957.53	37,136.79	{
	626—B2		667.39	1,237.14		
Gaines		716—G	79,381.65	5,002.77	97,134.83	
		936—E	10,227.54	3,220.53	12,551.84	
Liberty	125—Reop.2		20,000.00	531.49	24,679.06	{
	125—Reop.		25.80*	5,362.04		
	426—A2		19,969.02	651.04	20,487.36	
Lipscomb	621—BI&2		66,410.58		66,423.48	

Live Oak	931—E			2,942.00	
	886—A2	59,967.59	1,323.19	61,907.76	6
	886—B			4,424.94	
	931—A5	4,621.56		6,879.20	
	931—D2	23,089.16	789.75	19,966.75	{ 1
	931—E2	802.07	383.80		
	931—G			432.75	
	886—C			26,299.48	
	931—B			490.92	
	886—A			502.55	
Madison	610—G	9,961.81		10,180.81	1
	490—A3				
Matagorda	175—Reop.	38,375.84	181.82	49,685.32	
	416	49,380.96		53,101.67	
	428	26,799.50	114.84	33,571.94	
	455	2,349.45	129.04	2,541.55	
	609—B	4,222.73		5,422.92	
	609—B2		49,679.74		
	969—D	3,484.89		3,155.05	
	976—B2	5,517.59	6.27	1,848.54	
	976—B	637.54			
	978	2,750.69		2,911.05	
Pecos	612—C	12,613.04		15,419.16	{ 1
	612—C2		1,553.02		
	618—A	17,301.72		45,155.59	{ 2
	618—A2	12,848.63	9,564.94		{ 1
	618—B	15,599.57	5,482.35	24,787.12	1
	618—C	24,030.37	8,128.93	36,692.16	2
	618—D	9,572.92	7,365.72	20,261.60	
	618—E	28,471.72	4,343.47	44,012.64	3
	618—F	22,780.31	3,792.29	27,913.19	2
	618—G	7,662.47		9,869.72	
	618—G2		669.14		{
	619—A	15,054.24	10.39	16,701.79	1
	619—F	9,106.84	3,459.29	14,464.71	

STATE HIGHWAY DEPARTMENT
ESCROW ACCOUNTS WITH SECURITY TRUST COMPANY, AUSTIN, TEXAS, FEBRUARY

County	F. A. P.	S. A. P.	County Participation		Balances on Deposit as at Feb. 11, 1933	Unpaid on
			Reimbursements Receivable	Not yet charged		
		903—B	16,193.51		26,418.40	2
		903—C	669.67	2,239.24	2,952.99	
		910—C	10,491.78	261.73	10,823.06	1
		910—E			16.32	
	612—B		6,227.26		54,509.06	
	612—B2			42,136.99		
Reagan		904—A	13,326.81		19,624.08	1
		904—A2	20,495.17	21,587.07	61,558.98	2
		904—B	14,018.45		18,075.35	1
Refugio		807—B2	95,265.75	911.91		
		840—A	3,195.48			
		840—A2	119,523.63	1,025.12	362,977.26	
		840—D	15,370.47	7,809.37		
		840—D5	4,265.85			
Roberts	625—B2		71,128.77	9,949.63		
San Jacinto		682—D	31,319.45	2,969.03	50,763.73	
		751—B	11,835.83			1
Tyler	606—C		15,674.60	2,655.40	16,598.89	1
	630—C		33,795.95	2,428.68	14,188.16	3
	630—A				17,806.96	
	630—B		8,940.21	2,123.49	9,722.09	1
		890—D	4,192.26		6,608.08	
Van Zandt	363—A2		12,071.28		13,681.36	1
	363—B		3,294.84		4,203.43	
	363—C		4,400.74		3,778.55	
		496—C	465.21		285.35	

	363—D	496—D	5,366.91		3,653.73	
		629—A2	40,000.94	8,687.93	49,069.56	
		629—A	6.63*		6,208.47	
Wheeler	67—Reop.2		95,706.97		107,047.69	9
	547—D2		83,950.05		93,741.63	8
	547—E		326.40		1,067.42	
	547—F		8,539.73		7,432.86	
	547—D				10.64	
	45—D	1006—D5	3,278.36	301.73	2,289.35	
		844—E			394.30	
	573—J				36.62	
Wood (Maintenance)		M-10-G2	30,000.00		30,000.00	2
Totals			\$ 1,653,107.57	\$ 270,615.75	\$ 2,048,655.69	\$ 1,07

*Denotes deduction.

SCHEDULE 2.
LIST OF CHECKS HELD BY STATE HIGHWAY DEPARTMENT
Checks Drawn on Security Trust Company, Austin, Texas

Check Date	Project No. F. A. P. S. A. P.	Amount	
ANDREWS.			
Feb. 10, 1932	936-C1&2	\$ 2245.30	
Mar. 21, 1932	936-C1&2	1850.92	
Apr. 9, 1932	936-C1&2	7276.56	
May 14, 1932	936-C1&2	5936.24	
June 13, 1932	936-C1&2	3322.99	
Jul. 18, 1932	936-C1&2	5775.94	
Aug. 19, 1932	936-C1&2	12706.02	39,113.97
Dec. 5, 1932	936-C3		31,077.49
BELL.			
Feb. 22, 1932	670-C	2384.44	
Mar. 14, 1932	670-C	4100.68	
Apr. 5, 1932	670-C	14830.00	
May 16, 1932	670-C	23535.31	
Jun. 24, 1932	670-C	11,744.20	
Sep. 6, 1932	670-C	838.52	57,433.15
BURNET.			
Feb. 29, 1932	809-B		2,447.22
CALHOUN.			
Mar. 17, 1932	807-F	307.98	651.31
April 18, 1932	807-F	343.33	
May 16, 1932	969-A	1766.75	
Apr. 19, 1932	969-A	966.78	
Feb. 15, 1932	969-A	558.57	3,292.10
COLORADO.			
May 31, 1932	506-G	329.87	
May 31, 1932	506-G	1219.77	
May 11, 1932	506-G	2900.97	
May 11, 1932	506-G	695.88	
May 16, 1932	506-G	3200.66	
Jun. 21, 1932	506-G	4016.41	
Sep. 8, 1932	506-G	3502.04	
Sep. 3, 1932	506-G	867.54	17,373.18
Sep. 13, 1932	506-G	640.04	17,373.18
CONCHO.			
Jun. 1, 1932	590-C	1824.95	
Jun. 1, 1932	590-C	2956.08	
Feb. 2, 1932	590-C	2324.82	
Apr. 21, 1932	590-C	815.89	7,922.24
Mar. 11, 1932	590-D	3023.19	
Apr. 12, 1932	590-D	2797.05	
May 11, 1932	590-D	2891.44	
Jun. 22, 1932	590-D	4600.00	
Jul. 12, 1932	590-D	2738.24	
Oct. 22, 1932	590-D	5922.58	
Dec. 9, 1932	590-D	739.78	22,712.28
Apr. 12, 1932	626-A	442.54	
May 11, 1932	626-A	1986.58	
June 11, 1932	626-A	1423.69	
Jul. 12, 1932	626-A	804.52	
Aug. 9, 1932	626-A	2209.57	
Sept. 8, 1932	626-A	3159.68	
Oct. 7, 1932	626-A	1638.66	
Nov. 5, 1932	626-A	2194.27	
Dec. 5, 1932	626-A	2587.21	16,446.72
Jul. 12, 1932	626-B-2		391.40

SCHEDULE 2—continued.

LIST OF CHECKS HELD BY STATE HIGHWAY DEPARTMENT

Checks Drawn on Security Trust Company, Austin, Texas

Check Date	Project No.		Amount	
	F. A. P.	S. A. P.		
GAINES.				
Mar. 23, 1932	_____	716-G	4351.63	
Apr. 12, 1932	_____	716-G	6385.35	
May 27, 1932	_____	716-G	1727.12	
Aug. 9, 1932	_____	716-G	345.15	
Aug. 14, 1932	_____	716-G	6889.70	
Sep. 13, 1932	_____	716-G	9745.19	
Oct. 10, 1932	_____	716-G	11014.61	
Nov. 15, 1932	_____	716-G	11018.27	
Dec. 15, 1932	_____	716-G	32907.40	84,484.42
Nov. 3, 1932	_____	936-E	9710.69	
Dec. 14, 1932	_____	936-E	3337.38	13,048.07
LIPSCOMB.				
Mar. 8, 1932	621-B	_____	10213.64	
Apr. 5, 1932	621-B	_____	13753.68	
May 16, 1932	621-B	_____	31247.50	
Jun. 22, 1932	621-B	_____	11208.66	66,423.48
LIVE OAK.				
Jan. 7, 1932	_____	886-A2	_____	61,290.78
Jan. 22, 1932	_____	931-A5	_____	4,621.56
Jan. 14, 1933	_____	931-D2	_____	18,398.77
Dec. 30	_____	931-E2	_____	1,185.87
MADISON.				
Mar. 11, 1932	_____	610-G	3843.63	
Apr. 28, 1932	_____	610-G	3590.31	
May 18, 1932	_____	610-G	3412.83	10,846.77
MATAGORDA.				
Jan. 16, 1932	416 Reop.	_____	_____	7,175.48
Jan. 16, 1932	175 Reop.	_____	_____	7,999.94
Jan. 16, 1932	609-B	_____	_____	461.43
PECOS.				
Feb. 15, 1932	612-B	_____	_____	6,419.65
Jan. 15, 1932	612-C	_____	1090.86	
Feb. 13, 1932	612-C	_____	3910.57	
Mar. 12, 1932	612-C	_____	1385.49	
Apr. 12, 1932	612-C	_____	2074.69	
May 13, 1932	612-C	_____	1289.71	
Jun. 13, 1932	612-C	_____	648.05	
Jul. 12, 1932	612-C	_____	2964.37	13,363.74
Jan. 15, 1932	618-A	_____	1469.83	
Feb. 13, 1932	618-A	_____	4668.11	
May 5, 1932	618-A	_____	3604.05	
Apr. 12, 1932	618-A	_____	3367.89	
Jul. 12, 1932	618-A	_____	8939.37	22,049.25
Oct. 17, 1932	618-A 2	_____	1587.42	
Nov. 10, 1932	618-A 2	_____	2305.85	
Dec. 15, 1932	618-A 2	_____	5005.94	
Jan. 9, 1933	618-A 2	_____	2219.15	11,118.36
Sep. 10, 1932	618-B	_____	3955.54	
Oct. 17, 1932	618-B	_____	3149.50	
Dec. 20, 1932	618-B	_____	5487.05	12,592.09
Aug. 10, 1932	618-C	_____	1742.36	
Sep. 15, 1932	618-C	_____	3513.39	
Oct. 17, 1932	618-C	_____	3804.93	

SCHEDULE 2—continued.

LIST OF CHECKS HELD BY STATE HIGHWAY DEPARTMENT

Checks Drawn on Security Trust Company, Austin, Texas

Check Date	Project No.		Amount	
	F. A. P.	S. A. P.		
Nov. 10, 1932	618-C	-----	4530.51	
Dec. 15, 1932	618-C	-----	4674.94	
Jan. 9, 1933	618-C	-----	3742.12	22,008.25
Nov. 10, 1932	618-D	-----	1511.39	
Dec. 15, 1932	618-D	-----	5139.22	
Jan. 9, 1933	618-D	-----	2922.31	9,572.92
Apr. 12, 1932	618-E	-----	3364.58	
May 13, 1932	618-E	-----	8866.58	
Jun. 17, 1932	618-E	-----	5108.27	
Jul. 12, 1932	618-E	-----	4114.25	
Aug. 11, 1932	618-E	-----	1805.27	
Oct. 5, 1932	618-E	-----	3434.96	
Oct. 17, 1932	618-E	-----	6121.28	32,815.19
May 13, 1932	618-F	-----	1603.89	
Jul. 12, 1932	618-F	-----	4711.40	
Aug. 10, 1932	618-F	-----	5149.99	
Oct. 5, 1932	618-F	-----	6894.28	
Dec. 5, 1932	618-F	-----	8213.04	26,572.60
Feb. 13, 1932	618-G	-----	1579.36	
Mar. 5, 1932	618-G	-----	990.37	
Apr. 12, 1932	618-G	-----	2160.96	
May 13, 1932	618-G	-----	1386.75	
Jun. 25, 1932	618-G	-----	1836.65	7,954.09
Mar. 5, 1932	619-A	-----	1736.28	
Apr. 12, 1932	619-A	-----	3017.29	
May 13, 1932	619-A	-----	3378.59	
Jun. 17, 1932	619-A	-----	1671.70	
Jul. 12, 1932	619-A	-----	2249.51	
Aug. 10, 1932	619-A	-----	1695.58	
Aug. 22, 1932	619-A	-----	2817.03	16,565.98
Jun. 13, 1932	619-F	-----	269.22	
Dec. 15, 1932	619-F	-----	7945.16	
Jan. 9, 1933	619-F	-----	951.84	9,166.22
Jan. 15, 1932	-----	903-B	1710.33	
Feb. 13, 1932	-----	903-B	3301.13	
Mar. 12, 1932	-----	903-B	3106.32	
Apr. 30, 1932	-----	903-B	5212.52	
Oct. 12, 1932	-----	903-B	7961.39	21,291.69
Mar. 5, 1932	-----	910-C	412.60	
Apr. 12, 1932	-----	910-C	379.81	
May 13, 1932	-----	910-C	993.51	
Jun. 13, 1932	-----	910-C	1475.00	
Jul. 12, 1932	-----	910-C	1828.62	
Aug. 10, 1932	-----	910-C	1423.81	
Oct. 5, 1932	-----	910-C	4240.16	10,753.51
REAGAN.				
Jan. 15, 1932	-----	904-A	3507.10	
Feb. 15, 1932	-----	904-A	4534.33	
Mar. 12, 1932	-----	904-A	10232.76	18,274.19
Sept. 13, 1932	-----	904-A2	2720.82	
Oct. 15, 1932	-----	904-A2	2077.44	
Nov. 8, 1932	-----	904-A2	3085.17	
Dec. 6, 1932	-----	904-A2	3578.33	
Jan. 6, 1933	-----	904-A2	4115.26	
Feb. 6, 1933	-----	904-A2	4918.15	20,495.17
Feb. 12, 1932	-----	904-B	573.96	

SCHEDULE 2—continued.

LIST OF CHECKS HELD BY STATE HIGHWAY DEPARTMENT

Checks Drawn on Security Trust Company, Austin, Texas

Check Date	Project No.		Amount	
	F. A. P.	S. A. P.		
Mar. 7, 1932	-----	904-B	4019.10	
Apr. 11, 1932	-----	904-B	4202.24	
May 10, 1932	-----	904-B	2606.96	
May 25, 1932	-----	904-B	5872.27	17,274.53
SAN JACINTO.				
Jan. 19, 1932	-----	682-D	2089.34	
Feb. 9, 1932	-----	682-D	5478.12	
May 2, 1932	-----	682-D	870.16	8,437.62
Feb. 9, 1932	-----	751-B	792.18	
Feb. 9, 1932	-----	751-B	519.05	
May 2, 1932	-----	751-B	388.91	
Oct. 10, 1932	-----	751-B	9426.72	11,126.86
TYLER.				
Jun. 16, 1932	606-C	-----	1866.25	
Jul. 13, 1932	606-C	-----	5774.41	
Aug. 10, 1932	606-C	-----	2882.75	
Sep. 9, 1932	606-C	-----	825.20	
Oct. 5, 1932	606-C	-----	805.82	
Oct. 31, 1932	606-C	-----	6175.57	18,330.00
Feb. 11, 1932	630-A	-----	4212.44	
Mar. 11, 1932	603-A	-----	2757.98	
May 2, 1932	630-A	-----	2657.50	
Jun. 16, 1932	630-A	-----	7715.49	
Sep. 13, 1932	630-A	-----	15368.52	
Sep. 19, 1932	630-A	-----	6751.68	39,463.61
Sep. 9, 1932	630-B	-----	2692.74	
Oct. 5, 1932	630-B	-----	1815.39	
Nov. 7, 1932	630-B	-----	2105.71	
Jan. 3, 1933	630-B	-----	4449.86	11,063.70
Feb. 10, 1932	-----	890-D	712.99	
Mar. 11, 1932	-----	890-D	430.39	
Apr. 11, 1932	-----	890-D	3810.23	4,953.61
VAN ZANDT.				
May 24, 1932	363-A 2	-----		12,441.20
Feb. 11, 1932	363-B	-----	299.67	
Apr. 28, 1932	363-B	-----	721.68	
May 14, 1932	363-B	-----	850.24	
Aug. 15, 1932	363-B	-----	2124.41	3,996.00
Feb. 11, 1932	363-C	-----	949.00	
May 21, 1932	363-C	-----	560.49	
Apr. 28, 1932	363-C	-----	1333.06	2,842.55
Feb. 11, 1932	-----	496-D	931.90	
Apr. 29, 1932	-----	496-D	581.64	
Apr. 28, 1932	-----	496-D	1514.11	3,027.65
Apr. 28, 1932	-----	496-C		285.35
WHEELER.				
Apr. 12, 1932	67 Reop.	Rev. Unit 2	637.69	
Jan. 15, 1932	67 Reop.	Rev. Unit 2	7181.97	
Feb. 9, 1932	67 Reop.	Rev. Unit 2	25110.63	
Mar. 14, 1932	67 Reop.	Rev. Unit 2	39152.71	
Apr. 22, 1932	67 Reop.	Rev. Unit 2	17197.73	
May 17, 1932	67 Reop.	Rev. Unit 2	7061.95	96,342.63
Jan. 15, 1932	547-D 2	-----	3671.14	
Feb. 11, 1932	574-D 2	-----	4255.62	

SCHEDULE 2—continued.

LIST OF CHECKS HELD BY STATE HIGHWAY DEPARTMENT
Checks Drawn on Security Trust Company, Austin, Texas

Check Date	Project No.		Amount	
	F. A. P.	S. A. P.		
Mar. 14, 1932	574-D 2	-----	2794.76	
Jun. 27, 1932	574-D 2	-----	14364.74	
Apr. 12, 1932	574-D 2	-----	24751.16	
May 13, 1932	574-D 2	-----	26137.33	
Jun. 18, 1932	574-D 2	-----	8293.97	84,269.72
Apr. 12, 1932	547-F	-----	418.53	
Mar. 14, 1932	547-F	-----	762.57	
Jan. 15, 1932	547-F	-----	400.63	
Feb. 13, 1932	547-F	-----	1809.34	
Jul. 14, 1932	547-F	-----	900.85	
Jun. 18, 1932	547-F	-----	904.10	
May 11, 1932	547-F	-----	391.82	5,587.84
May 11, 1932	-----	1006-D5	1149.97	
Jun. 18, 1932	-----	1006-D5	778.80	
Apr. 14, 1932	-----	1006-D5	344.30	2,272.07
WOOD.				
Feb. 9, 1932	-----	Maintenance M-10-G-2		20,000.00

Total checks drawn on Security Trust Company,

Austin, Texas. \$1,077,426.52

Note A. In addition to the foregoing checks drawn on the Security Trust Company, Austin, Texas, the Highway Department was holding a check dated November 21, 1932, drawn on the Farmers State Bank, Haskell, Texas, by Haskell County to apply on Project F. A. P. 587-A 2 in the amount of \$6,000.00
Less partial payments of 3,000.00

Balance due \$3,000.00

Note B. All of the checks listed herein were signed by county officials.

EXHIBIT A
THE AMERICAN NATIONAL BANK
of Austin
Austin, Texas.

This is to certify that the attached list of securities is a correct list of the securities held by us in escrow for the Highway Department, the Security Trust Company of Austin, Texas, and the various counties named in said list.

Dated at Austin, Texas, this 11th day of February, 1933.

The American National Bank,
Austin, Texas.

(Signed) By: L. D. WILLIAMS,
Cashier.

ANDREWS COUNTY

City of Burkburnett 6% Refunding Bonds	\$ 6,000
Cameron County 5% Road Bonds	3,000
Dickens County 6% General Funding Warrants	5,000
Hidalgo County 6% Water Control Imp. Dist. No. 6 Bonds	40,000
Liberty County 5% Road Bonds	1,000
City of Mineola 5% Waterworks Bonds	1,500
City of Muleshoe 6% Funding Warrants	5,000
Navarro Co. Road District No. 7 Bonds	500
City of O'Donnell 6% Funding Warrants	6,500
Panola County 5% Road Bonds	6,000
San Patricio County Road Dist. 5 Bonds	1,000
Stonewall County 6% Funding Warrants	3,000
Willacy County 6% Water Dist. 1 Bonds	5,000
Zapata County 6% Permanent Imp. Warrants	9,000

BELL COUNTY

Liberty County 5% Road Bonds	\$ 25,000
City of Corpus Christi 5% Funding Bonds	45,000
Live Oak County 5% Road Bonds	1,000

71,000

BOWIE COUNTY

Hidalgo County 6% Water Dist. No. 6 Bonds	21,000
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COLORADO COUNTY

Colorado County 6% Permanent Imp. Bonds	23,000
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CONCHO COUNTY

Cameron County Irrigation Dist. No. 1 Bonds	3,000
City of Childress 6% Street Imp. Warrants	5,000
City of Donna 6% Waterworks Warrants	35,000
Hidalgo County Irrigation Dist. No. 1 Bonds	4,000
Hidalgo County Water Dist. No. 3 Bonds	1,000
Willacy County Water District No. 1 Bonds	16,000

64,000

GAINES COUNTY

City of Donna 6% Waterworks Warrants	35,000
Hidalgo County Water District No. 12 Bonds	10,000
City of Megargel 5½% Funding Bonds	2,000
Willacy County Water District No. 1 Bonds	40,000
Wood County 6% Road Bonds	20,000

107,000

LIBERTY COUNTY

Willacy County Water District No. 1 Bonds	40,000
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LIPSCOMB COUNTY

City of Bowie 6% Street Imp. Warrants	7,000
Briscoe County Line 5% R. H. S. Bonds	3,500
Cameron County 6% Water District 5 Bonds	1,000
Kimball County 6% Road and Bridge Funding War- rants	2,000
City of Kirbyville 6% Waterworks Bonds	4,000
LaSalle and McMullen Counties 6% W. D. No. 1 Bonds	7,000
Motley County 6% Funding Warrants	1,000
City of Muleshoe 6% Sewer Warrants	319
Pecos County 5% Water District No. 1 Bonds	1,000
City of Ranger 6% Street Equipment Warrants	3,600
City of Trinity 6% Fire Apparatus Warrants	3,000
Willacy County 6% Water District No. 1 Bonds	35,000

68,419

LIVE OAK COUNTY

Cameron County 6% Water District No. 3 Bonds	8,000
Cameron County 6% Water District No. 5 Bonds	5,000
City of Hermleigh 6% Waterworks Warrants	7,000
Hidalgo 7% Water District 4 Notes	5,000
Dallas Joint Stock Land Bank Bonds	9,000
Houston Joint Stock Land Bank Bonds	1,000
Shelby County 5½% Road and Bridge Funding Bonds	5,000
City of West University Place 6% Waterworks Bonds	7,000
Willacy County 6% Water Dist. No. 1 Bonds	75,000

122,000

MADISON COUNTY

San Antonio Joint Stock Land Bank Bonds	2,000
City of Spearman 5½% Funding Bonds	20,000
Trinity County 5½% Road Bonds	1,000

23,000

MATAGORDA COUNTY

Karnes County 5% Road District 7 Bonds	85,000
Liberty County 5% Road District 4 Bonds	33,000
Liberty County 5% Road District 4 Bonds	29,000
Montgomery County 5½% Road & Bridge Funding Bonds	4,000

151,000

PECOS COUNTY

Atascosa County 5½% Road & Bridge Funding Bonds	948.45
Bell County 5% Road District 5 Bonds	100
City of Bowie 6% Street Imp. Bonds	1,000
Cameron County 8% Water District 3 Bonds	6,000
Childress County 6% Funding Warrants	2,000
City of Corpus Christi 5% Street Bonds	1,000
Fort Stockton Ind. Sch. Dist. 6% Voucher	15,000
Gaines County 6% Funding Warrants	5,000
City of Goose Creek 6% Sewer Warrants	8,000
City of Gruver 6% Sewer Warrants	3,000
Harris County 5% Sch. Dist. Bond	1,000
Henderson County 5% Road District 8 Bonds	1,500
Hidalgo County 6% Road & Bridge Warrants	1,000
Hidalgo County 6% Tick Eradication Warrants	2,000
Dallas Joint Stock Land Bank Bonds 5%	13,000
a. Represented by bonds of \$12,000 and cash of \$3,000.	
City of Kenedy 5½% Funding Bonds	1,000
Leon County 6% Bridge Warrants	5,000
City of Levelland 5½% Sewer Bonds	5,500
Liberty Ind. Sch. Dist. Vouchers	4,160
Liberty County 6% Courthouse Funding Bonds	31,000
City of Littlefield 6% Funding Warrants	20,000
Orange County 5½% Road and Bridge Funding Bonds	506
Panola County 5½% Road Bonds	7,000
Pecos County 5½% Road Bonds	19,000
City of Port Arthur 5% Bridge Bonds	1,500
Sabine County 5½% Road Bonds	1,000
Sabine County 6% Funding Warrants	4,000
Sabine County 5% Road District 9 Bonds	500
Shelby County 6% Road Imp. Warrants	500
City of Sinton 5½% Waterworks Bonds	1,000
City of Slaton 6% Waterworks Bonds	500
City of Sulphur Springs 5% Auditorium Warrants	11,000
City of Sulphur Springs 6% Funding Warrants	34,000
City of Three Rivers 6% Waterworks Bonds	1,000
City of West University Place 5½% Funding Bonds	1,000
Wichita Falls Ind. Schl. Dist. 4½% Sch. Dist. Bonds	1,000
Wichita County 6% Water Dist. No. 1 Bonds	15,000
Willacy County 6% Water District No. 1 Bonds	141,000
City of Yoakum 5% Hospital Bonds	1,000
Zapata County 6% Road & Bridge Warrants	14,500

382,214.45

REAGAN COUNTY

City of Archer City 6% Funding Warrants	9,000
Cameron County 6% Irrigation No. 1 Bonds	5,000
Cameron County 6% Water District 5 Bonds	5,000
Chambers County 5% Road District 2 Bonds	4,000
Dallas County 6% Levee District 5 Bonds	4,000
Donna Irrigation 6% Bonds	46,000
City of Donna 6% Refunding Bonds	15,000
Gaines County 6% Courthouse & Jail Warrants	1,000
City of Goose Creek 6% Street Warrants	10,000
Hidalgo County 6% Water District 5 Bonds	1,000
Karnes County 5% Road Dist. 1 Bonds	4,000
City of Levelland 5½% Waterworks Bonds	17,000

Liberty County 5% Road Bonds	4,000
Liberty County 5% Road Dist. 4 Bonds	4,000
Montgomery County 5½ % Funding Warrants	24,000
City of Port Arthur 5% Waterworks Bonds	2,000
b. Represented by bond of \$3,000 and cash of \$1,160.	
City of Port Neches 6% Improvement Warrants	12,000
City of San Marcos 5½ % School Bonds	1,000
Titus County 6½ % Funding Warrants	3,000
City of Trinity 6% Funding Warrants	26,000
City of Trinity 6% Funding Warrants	15,000
City of White Deer 5% Paving Bonds	12,500
Willacy County Water District No. 1 Bonds	7,000

231,500

REFUGIO COUNTY

Bell County 5% Road Dist. 9a Bonds	5,000
Brewster County 5½ % Road Ref. Bonds	3,000
Cameron County 6% Water District 15 Bonds	24,500
Camp County 5% Rd. Dist. 1 Bonds	1,000
City of Childress 6% Treasury Warrants	3,000
Cottle County 5% Road Bonds	1,000
City of Crosbyton 6% Funding Warrants	15,000
Dayton Ind. Sch. Dist. 5% Bonds	5,000
City of Dublin 5% Waterworks	1,000
City of Edna 6% Waterworks Bonds	1,000
City of Fayetteville 5½ % Waterworks Bonds	3,000
City of Goose Creek 6% Waterworks Warrants	4,000
Henderson County 5% Rd. Dist. 1 Bonds	6,000
Hopkins County 5% Road Bonds	4,000
Dallas Joint Stock Land Bank Bonds 5%	11,000
San Antonio Joint Stock Land Bank Bonds 5%	47,000
San Antonio Joint Stock Land Bank Bonds 5½ %	5,000
Karnes County 5% Road Dist. 1 Bonds	2,000
Karnes County 5½ % Road District 7 Bonds	11,000
Kemp County 5% Road District 7 Bonds	10,000
Madison County 5% Rd. Bonds	12,000
City of Monahans 6% Waterworks Bonds	10,000
Montgomery County 6% Funding Warrants	29,000
Nueces County 5% Navigation Dist. No. 1 Bonds	4,000
City of O'Donnell 5½ % Funding Bonds	8,000
City of Pasadena 6% Waterworks and Sewer Bonds	4,000
City of Pasadena 6% Sewer Bonds	4,000
Refugio County 5½ % Road Bonds	81,000
City of Robert Lee 6% Waterworks Bonds	3,000
Sabine County 5% Road Dist. No. 3 Bonds	1,000
San Jacinto County 5½ % Road Bonds	5,000
San Jacinto County 5½ % Road Dist. No. 4 Bonds	2,000
San Patricio 5% Road Dist. 4 Bonds	12,000
San Patricio County 5½ % Road District 5 Bonds	11,000
Somervell County 5½ % Road Bonds	2,000
City of Spur 5% Waterworks Bonds	10,000
Stonewall County 6% Funding Warrants	8,000
City of Thorndale 5½ % Waterworks Bonds	1,000
Trinity County 5½ % Road Bonds	1,000
Tyler County 5½ % Road Dist. 2 Bonds	11,000

361,500

SAN JACINTO COUNTY

City of Pharr 5% Funding Bonds	52,000
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TYLER COUNTY

Aransas County 6% Permanent Imp. Bonds	27,000
Franklin County 6% Funding Warrants	6,000
City of LaPorte 6% St. Imp. Bonds	5,000
Tyler County 5½ % Road Dist. 2 Bonds	1,000

39,000

VAN ZANDT COUNTY

Willacy County 6% Water District No. 1 Bonds	32,000
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32,000

WHEELER COUNTY

Briscoe County 5% R. H. S. Bonds	12,000
Bronte 6% Ind. Schl. Dist. Bonds	500
Cameron County 5% Road Bonds	20,000
Cameron County 6% Water District 1 Bonds	14,000
Cameron County 6% Water District 2 Bonds	9,500
Hidalgo County 6% Water District 6 Bonds	78,000
Hidalgo County 6% Street Paving Warrants	4,000
Hidalgo County 7% Road Imp. Bonds	5,000
Kimble County 6% Road and Bridge Funding Warrants	2,000
Motley County 6% Bridge Repair Bonds	995
Nolan County 5% Road District 1 Bonds	6,000
Orange County 5% Common School District 20 Bonds	200
City of Spearman 5½% Funding Bonds	21,000
City of Sulphur Springs 5½% Funding Warrants	11,000
Wheeler County 4% Jail Bonds	7,000
Willacy County 6% Water Dist. No. 1 Bonds	17,000

208,195

WOOD COUNTY

Cameron County 6% Irrigation 1 Bonds	2,000
City of Lometa 6% Sewer Warrants	1,000
City of Paducah 5½% Street Warrants	6,000
Sabine County 5½% Road Bonds	2,000
Shelby County 6% Funding Warrants	1,000
City of Spur 6% Waterworks Bonds	1,000
San Patricio County 4¾% Road Dist. 5 Bonds	1,000
City of Stamford 5½% Water Supply Bonds	1,000
Willacy County 6% Water District No. 1 Bonds	15,000

30,000.00

GRAND TOTAL	\$ 2,119,328.45
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EXHIBIT B.

Copy of Special Escrow Agreement.

Whereas, Andrews County, Texas, has on deposit with the Security Trust Company, Austin, Texas, funds in the amount of ninety-two thousand four hundred forty-one and 04/100 (\$92,441.04) dollars, proceeds of bonds to aid in the construction and improvement of certain State designated highways in said county, for which deposit of funds said Trust Company issued to said county its certificate of deposit; and,

Whereas, Said county received and now holds certain collateral from said Security Trust Company to secure said deposit of funds, as listed in the collateral agreement with said Trust Company, copy of which list is hereto attached; and

Whereas, Said Trust Company is not now in available cash funds to meet warrants of said county drawn

upon against said deposit or credit, to reimburse the Highway Department (or State Highway Fund) for advances made by the Department for account of said county as the same become due, as the work of such construction proceeds; and

Whereas, Necessity exists that said Highway Department be secured for such advances;

Now, Therefore, said Andrews County, through its Commissioners' Court and County Judge, does hereby, in consideration of the premises, allocate, set aside, and pledge to the Highway Department of Texas, the funds so on deposit with said Trust Company, together with all the collateral received and held by said County as security for said deposit and funds, to secure all sums due to the State Highway Department, or that may become due to said Highway Department, by said County as and for said County's

share or amount of such construction which has been or may be advanced or paid out by the Highway Department for account of such County on such construction or improvement until the entire amount of such advances shall be paid and satisfied in full according to the contract or arrangement entered into by said County and the Highway Department; this action being necessary to enable the Highway Department to carry on the work of construction now under contract and under way.

It is further agreed by and on behalf of said County, that such deposit of funds with said Trust Company shall not be withdrawn or waived or diverted to any other use or purpose without the written consent of the State Highway Commission, until the full purpose of this pledge and agreement shall have been fully fulfilled. And it is further agreed by and on behalf of said County that the said collateral to secure said deposit of funds shall not be withdrawn, diverted, substituted, waived, or released, in whole or part, without the written consent of the Highway Commission.

In consideration hereof the Highway Department will carry on and complete the project or projects now under contract in said County, for which said funds are paid, and will advance, for the time being, the County's share of the same for account of said County.

That as to any further construction of highway projects in said County, under the arrangement and pledge herein provided, the Highway Commission does not undertake to bind the department; but such additional construction, if any, will be decided upon from time to time by the Highway Commission under arrangements that may be entered into by the parties hereto.

This Contract or Agreement, which is executed in duplicate, is to be spread on the proper minutes of the County Commissioners Court of said County, and a duplicate original placed in the files of the Highway Department.

Dated this 5th day of Feb, 1932.

H. T. WILSON, County Judge.

By Cone Johnson

TEXAS STATE HIGHWAY DEPARTMENT

(Seal)

W. L. WHITE, Commissioner,
Precinct No. 1.

W. R. ELY
(Seal)

K. H. IRWIN, Commissioner,
Precinct No. 2.

(Seal)

H. H. WOOLEY, Commissioner,
Precinct No. 3.

M. A. THORNBERRY, Commissioner,
Precinct No. 4.

The Security Trust Company hereby recognizes the foregoing agreement between the State Highway Commission and Andrews County, and agrees to the carrying out of the same as contained in said agreement.

Dated this 12th day of Feb., A. D., 1932.

(Seal)

E. P. CRAVENS,
Vice-President.

The American National Bank of Austin, Texas, hereby acknowledges receipt of the foregoing contract between Andrews County, the Security Trust Company, and the State Highway Department, and attaches hereto a list of collateral held by it as trustee to secure the deposit of said County in the Security Trust Company; and agrees to continue to hold such collateral as trustee, in accordance with the original agreement between Andrews County and the Security Trust Company, as amended in said foregoing contract between Andrews County and the Security Trust Company and the State Highway Department.

Dated at Austin, Texas, this the 13th day of February, A. D. 1932.

AMERICAN NATIONAL BANK OF
AUSTIN, TEXAS.

By L. D. WILLIAMS,
Its Cashier and Trust Officer.

EXHIBIT C.

Under date of January 26, 1932, Hon. Cone Johnson, State Highway Commissioner, made inquiries of the Attorney General as follows:

"(1) Can the State Highway Department accept bonds or other obligations of any political subdivision of the State which are not in default, including those which are now held as pledges to secure funds presently to be used in road construction under the State Highway Department in lieu of cash when and as highway bills are presented

to the county for payment?

"(2) That until such pledged securities can be sold, can the State Highway Department proceed with the work and not demand or 'bill' the counties involved for their part of the roads being constructed.

"(3) Can the State Highway Department proceed with such work and demand of such counties their checks as such work progresses, and impound and hold such checks against said county depositories if in the opinion of the county or the State Highway Department such checks cannot be cashed without imperiling the ultimate safety and payment of the funds of the county or counties involved?

"(4) Can the Highway Department proceed with such work upon the county or counties placed in escrow bonds or other securities now forming the basis of pledges for county deposits for safekeeping, pending the liquidation of county indebtedness to the Department?"

The reply dated Jan. 27, 1932, contained the following language:

"You are . . . advised that in my opinion there is no statutory authority for the Highway Department to pursue any of the courses set out in questions Nos. 1, 2, and 4, and we believe such courses are inhibited by law.

"This leaves only the method set out in question 3 for consideration.

"As the Highway Department is authorized by law to make contracts with counties for the construction of roads, the counties to pay such part of the cost of construction as may be agreed upon, and as there is no direct statutory provision as to when the State Highway Department shall cash the warrants issued by the county in payment of its prorata share of such construction, we cannot find any provision of the statutes that would expressly prohibit the State Highway Department from pursuing the course outlined in your question No. 3. However, in this connection we do not deem it inappropriate to suggest that the agreement entered into between a particular county and its depository, whereby bonds have been placed by the depository with a bank acting as trustee for both the depository and the county, be modified in such way that the

pledged bonds cannot be sold, exchanged or otherwise disposed of without the consent of the State Highway Department. This in order to fully protect the interest of the State Highway Department in said pledged securities.

"You are further advised that in our opinion it would not be legal for a county, road district, or political subdivision thereof to pledge its own bonds, warrants, or other evidences of indebtedness to secure the Highway Department in the payment of its part of the cost of such road improvements."

TWENTY-SEVENTH DAY.

Senate Chamber,
Austin, Texas,
February 21, 1933.

The Senate met at 10 o'clock a. m., pursuant to adjournment, and was called to order by Lieutenant Governor Edgar E. Witt.

The roll was called, a quorum being present, the following Senators answering to their names:

Beck.	Pace.
Blackert.	Parr.
Collie.	Patton.
Cousins.	Poage.
DeBerry.	Purl.
Duggan.	Rawlings.
Fellbaum.	Redditt.
Greer.	Regan.
Holbrook.	Russek.
Hopkins.	Sanderford.
Hornsby.	Small.
Martin.	Stone.
Moore.	Woodruff.
Murphy.	Woodul.
Neal.	Woodward.
ONeal.	

Prayer by the Chaplain.

Pending the reading of the Journal of yesterday, the same was dispensed with on motion of Senator Woodward.

Committee Reports.

(See Appendix.)

Bills and Resolutions.

By Senator Parr:

S. B. No. 248, A bill to be entitled "An Act making certain emergency appropriations out of the general revenue of the State of Texas for the balance of the fiscal year ending